
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT.

FRANK MENEFEE, B. F. BONNEWELL, H. M.
TODD and OSCAR A. CAMPBELL,
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

**TRANSCRIPT OF RECORD
ON WRIT OF ERROR**

To the District Court of the United States for the Dis-
trict of Oregon.

Filed

MAR 27 1916

F. D. Monckton,
Clerk,

United States Circuit Court of Appeals

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*United States Circuit Court of Appeals for the
Ninth Circuit.*

Frank Menefee, B. F. Bonnewell, H. M. Todd and
Oscar A. Campbell,

Plaintiffs in Error,

vs.

The United States of America,

Defendant in Error.

**NAMES AND ADDRESSES OF THE ATTOR-
NEYS OF RECORD.**

Mr. Martin L. Pipes,
Chamber of Commerce Building, Portland, Oregon,

Mr. J. J. Fitzgerald,
Mohawk Building, Portland, Oregon,
and

Mr. John F. Logan,
Mohawk Building, Portland, Oregon,
For the Plaintiffs in Error.

Mr. Clarence L. Reames,
United States Attorney, Postoffice Building, Port-
land, Oregon,
For the Defendant in Error.

CITATION ON WRIT OF ERROR.

United States of America,
District of Oregon,—ss.

To United States of America,
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein Frank Menefee, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 1st day of March in the year of our Lord, one thousand, nine hundred and sixteen.

R. S. BEAN,
Judge.

Due service of the within citation is hereby accepted this 1st day of March, 1916.

Clarence L. Reames, United States Attorney.

Filed March 1, 1916.

G. H. Marsh, Clerk.

*In the United States Circuit Court of Appeals for the
Ninth District.*

Frank Menefee, B. F. Bonnewell, H. M. Todd, and
Oscar A. Campbell,

Plaintiff in Error,

vs.

The United States of America,

Defendant in Error.

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America.

To the Judge of the District Court of the United States
for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between The United States of America, Plaintiff and Defendant in Error, and Frank Menefee, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, Defendants and Plaintiffs in Error, a manifest error hath happened to the great damage of the said Plaintiff in Error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid,

with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

WITNESS the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States this 11th day of February, 1916.

G. H. Marsh,
Clerk of the District Court of the United States for the
District of Oregon.

Seal, United States)
District Court,) }
District of Oregon.)

Filed February 11, 1916.

G. H. Marsh,
Clerk, United States District Court, District of Oregon.

*In the District Court of the United States for the
District of Oregon.*

November Term 1914.

BE IT REMEMBERED, That on the 27th day of February, 1915, there was duly filed in the District

Court of the United States for the District of Oregon,
an Indictment, in words and figures as follows, to wit:

INDICTMENT.

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.
Gernert, B. F. Bonnewell, H. M. Todd, Joseph
Hunter, O. L. Hopson, P. E. Muraine and Oscar
A. Campbell,

Defendants.

INDICTMENT for Violation of Section 37 of the
Penal Code.

United States of America,

State and District of Oregon,—ss.

The Grand Jurors of the United States of America
for the District of Oregon, duly impaneled, sworn and
charged to inquire in, of and concerning the commission
of crime within and for said district, upon their oaths and
affirmations do allege, present, find and charge:

That at and during all of the times and dates in this
indictment mentioned, stated, designated and specified,
United States Cashier Company has been and now is a
corporation organized and existing under and by virtue
of the laws of the State of Oregon with its principal
office and place of business in the City of Portland, in

the County of Multnomah and within the State and District of Oregon aforesaid.

That at all of the times between the 1st day of September, 1910, and the 31st day of January, 1914, the defendant herein, Frank Menefee, was a duly elected, qualified and acting director of said corporation; that at and during all of the times between the 1st day of September, 1910, and the 31st day of January, 1914, he, the said defendant, Frank Menefee, was the duly elected, qualified and acting President of said corporation; that at and during all of the times between the 28th day of September, 1910, and the 31st day of January, 1914, he, the said defendant, Frank Menefee, was the duly elected, qualified and acting General Manager of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 1st day of November, 1912, the above named defendant, F. M. LeMonn, was the duly elected, qualified and acting sales manager of said corporation.

That at and during all of the times and dates between the 1st day of January, 1911, and the 1st day of April, 1912, the defendant, O. E. Gernert, was an agent and salesman for said corporation, and the duly appointed, qualified and acting assistant sales manager of said corporation.

That at and during all of the times and dates between the 15th day of April, 1911, and the 31st day of January, 1914, the defendant, B. F. Bonnewell, was the

duly elected, qualified and acting fiscal agent for the said corporation, and an agent and salesman for said corporation.

That at and during all of the times and dates between the 15th day of April, 1911, and the 1st day of December, 1913, the defendant, H. M. Todd, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 26th day of May, 1911, and the 31st day of January, 1914, the defendant, Joseph Hunter, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 23rd day of November, 1910, and the 1st day of July, 1913, the defendant, O. L. Hopson, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 6th day of March, 1911, and the 31st day of January, 1914, the defendant, P. E. Muraine, was a duly appointed, qualified and acting sales agent for said corporation.

That at and during all of the times and dates between the 12th day of June, 1911, and the 31st day of January, 1914, the defendant, Oscar A. Campbell, was a duly elected, qualified and acting director of said corporation; that at and during all of the times and dates between the 30th day of January, 1912, and the 31st day

of January, 1914, he, the said defendant, Oscar A. Campbell, was the duly elected, qualified and acting vice-president of said corporation.

That at and during all of the times and dates between the 9th day of June, 1913, and the 31st day of January, 1914, the defendant, Thomas Bilyeu, was a duly elected, qualified and acting director of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 31st day of January, 1914, the capital stock of the said corporation amounted to the sum of one million two hundred thousand dollars divided and segregated by the Articles of Incorporation of said corporation into one hundred twenty thousand shares of the par value as fixed and stated in said Articles of Incorporation of ten dollars for each and every of said shares.

That at the City of Portland within the County of Multnomah and within the State and District of Oregon, and on or about the 1st day of September, 1910, (the exact date being to the Grand Jurors unknown), the defendants herein, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, did then and there unlawfully, wilfully and feloniously conspire, confederate and agree together, and with divers other persons to the Grand Jurors unknown, to commit the acts made offenses and crimes by the laws of the United States to prevent the use of the United States mails to promote fraud, to wit: Section Two Hundred Fifteen of the Criminal Code of

the United States; that is to say: the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, did then and there unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, and with divers other persons to the Grand Jurors unknown, to devise and execute a scheme and artifice to defraud to be effected by means of the Post Office establishment of the United States, and to obtain money and property by means of false and fraudulent representations, pretenses and promises from Harry Wainright, John Marshall, C. F. L. Smith, Francis Gzella, A. A. Milliken, J. W. Zufall, Harry I. Carruthers, R. O. Holmes, John Straub, T. W. Harris, L. H. Robinson, J. C. Flaherty, C. K. Clarke, E. W. Draper, James Hansen, W. B. Morse, E. D. Paine, R. L. Anderson, E. A. Mulkey, C. A. McMahon, R. L. Robison, E. O. Tobey, S. M. Sim, J. W. Brett, Bert Sallaberry, H. J. Johnson, G. A. Frees, Ole G. Vinger, Herman A. C. Ludecke, William Herzog, Forbes Wiseman, Henry W. Axford, T. Warsop Cooper, Annabelle McRay, Charles E. Hatfield, Matilda O. Johnson, Conrad Stafrin, John Meyers, J. H. Manis, A. L. Pierce, John Irrigoin, Fred Williams, H. J. Shannon, Emma G. Hedges, Mary E. Hall, W. H. Garl, Thomas T. Davies, M. C. Carlson, George F. Cobb, Edward Klein, W. T. Roberts, John H. Ballagh, J. J. Bauer, H. T. Johnson and A. M. Armstrong (the last named fifty-five persons being hereinafter in this indictment designated, termed and called "INVESTORS"), and

from divers other persons to the Grand Jurors unknown, and the public generally, by inducing, inciting, and procuring the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, to open communication with the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and with the said United States Cashier Company, a corporation, and by inducing, inciting and procuring the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, to purchase from the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and from said corporation, namely: United States Cashier Company, the shares of stock of said corporation, and to pay over, deliver and to transfer to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, in exchange and payment for said shares of stock the money and property of the said "INVESTORS" and of divers other persons to the Grand Jurors unknown, the payment of said sums of money to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell,

and to the said corporation, namely: United States Cashier Company, and the transfer of said property to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, to be induced, incited and procured by the false and fraudulent representations of the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, to be made to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell carried out, carried on and effected by the further means, methods, manner and plans, that is to say: the said defendants Frank

Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell would cause, induce, incite and procure the said "INVESTORS" and many and divers other persons to the Grand Jurors unknown, and the public generally, to pay over and to deliver to and to transfer to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation in payment of and in exchange for the shares of stock of said corporation, United States Cashier Company, money and property of the value of more than the sum of one million dollars, which said payment of said money and which transfer of said property was to be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell induced, incited, procured and obtained by the dishonest, fraudulent and false representations and promises hereinafter set forth, all to be made to the said "INVESTORS" by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to divers other persons to the Grand Jurors unknown, and the public generally, and to swindle, cheat and defraud said "INVESTORS" and each, every and all thereof, and various and sundry other persons to the Grand Jurors unknown, and the public generally, out of

all of the said sums of money and the said property that the said "INVESTORS" and various other persons to the Grand Jurors unknown and the public generally, should pay over and deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or either thereof, or to the said corporation, namely: United States Cashier Company.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell carried out, carried on and effected by the further means, methods, manner and plans, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and various and divers other persons to the Grand Jurors unknown and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said

corporation, money and property in exchange and payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, would falsely and fraudulently and by means of printed advertisements to be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, inserted in newspapers, in pamphlets, in catalogues, in circulars and in letters, and to be written in letters, which said newspapers, pamphlets, catalogues, circulars and letters were to be by the said defendants transmitted and caused to be transmitted and sent by and through, and by means of the Post Office establishment of the United States, to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown, and by words to be orally spoken by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, represent, pretend and promise that the said corporation, namely: United States Cashier Company owned the patents to a certain "CHANGE COMPUTING MACHINE," a certain "BANK CASHIER MACHINE," a certain "LIGHTNING CHANGE MAKER," a certain "CURRENCY PAYING MACHINE" and a certain "NEW STYLE ADDING MACHINE," and that the said corporation, namely: United States Cashier Company, was engaged in the business of manufac-

turing and selling said machines, and each, every and all thereof; that on account of the said alleged ownership of said patents and the said alleged manufacturing of said machines by said corporation, the said shares of stock of said corporation, namely: United States Cashier Company, were of great commercial value and that large dividends would be by said corporation declared and paid thereon to the said "INVESTORS" and to all other persons who should purchase the same from the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or from the said corporation, namely: United States Cashier Company; that said corporation, namely: United States Cashier Company would declare and pay to all of said "INVESTORS," and to divers other persons to the Grand Jurors unknown, and to all persons who should purchase the shares of stock from said corporation large and certain dividends upon said stock within six months from the date that any of said persons should purchase any of said shares of stock from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or either thereof, or from said corporation, namely: United States Cashier Company; that the said corporation, namely: United States Cashier Company, was the owner and in the possession of large bona fide orders for the purchase of said machines and that on account of said orders for the said machines the said corporation would make a large and

certain profit; that the financial condition of the said corporation, namely: United States Cashier Company, was excellent, and that the assets of said corporation, namely: United States Cashier Company, far exceeded in value the total amount of the liabilities against and owed by said corporation, namely: United States Cashier Company; that a certain large amount of the capital stock of said corporation, namely: United States Cashier Company, the exact amount of the same being to the Grand Jurors unknown, which said stock would be offered for sale to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown and the public generally, belonged to and was the property of the said corporation, namely: United States Cashier Company, and that the money derived from the sale thereof would be by said corporation invested and used in such a manner as to increase the assets of said corporation, namely: United States Cashier Company, and to make its shares of stock more valuable, and particularly for the purpose of purchasing and building factories in which to increase the manufacture of said machines; that inasmuch as the assets of said corporation, namely: United States Cashier Company, exceeded and was greater than the liabilities of said corporation, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, were justified in raising and increasing the selling price of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each

to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each; from a selling price of twenty dollars each to a selling price of thirty dollars each; and from a selling price of thirty dollars each to a selling price of fifty dollars each.

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each and every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, neither the said corporation, namely: United States Cashier Company, nor any of said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, owned the patents to said certain "CHANGE COMPUTING MACHINE," or said certain "LIGHTNING CHANGE MAKER," or said certain "CURRENCY PAYING MACHINE," or said certain "NEW STYLE ADDING MACHINE," or either thereof; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and be-

tween all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the said corporation, namely: United States Cashier Company was not engaged in either the business of manufacturing or selling said machines, or any thereof, but on the contrary its business was to sell and dispose of the said shares of stock; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the said shares of stock and each, every and all thereof, were of very little value and of practically no value whatsoever, and said shares of stock and each, every and all thereof were practically worthless; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, no dividends whatsoever would ever be by said corporation, namely: United States Cashier Company, either declared or paid to the said "INVESTORS," or to any other person who should purchase the said shares of stock by either the said corporation, namely: United States Cashier Company, or by any of the said defend-

ants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment then and there well knew, none of the said "INVESTORS," or any other person who should purchase said shares of stock, would ever receive, either from said corporation, namely: United States Cashier Company, or from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine or Oscar A. Campbell, any dividend whatsoever; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, Joseph Hunter, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the said corporation, namely; United States Cashier Company, was neither the owner nor in the possession of the said alleged bona fide orders for the purchase of said machines; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the financial condition of said corporation, namely: United States Cashier Company, was not excellent, but on the contrary at and during all of the times and dates mentioned, specified and stated in this indictment, and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, then and there well knew, the said corporation, namely: United States Cashier Company, was absolutely insolvent; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, the value of the assets of said corporation, namely: United States Cashier Company, amounted to a sum much less than the total amount of the liabilities against and owed by said corporation, namely: United States Cashier Company; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu,

O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, a very large amount of the shares of stock of said corporation, namely: United States Cashier Company, which the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell were to in manner and form as hereinbefore alleged represent as being the property of the said corporation, namely: United States Cashier Company, consisted of shares of stock owned by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and all of the sums of money and all of the property received on account of the sale thereof would be appropriated by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and none of the same or any part thereof would be paid into the treasury of the said corporation, namely: United States Cashier Company, to be used by it, either for increasing the assets of said corporation, or otherwise; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A.

Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, none of the said defendants, or any thereof, were at any time on account of the financial condition of said corporation justified in either raising or increasing the selling price of said shares of stock, or any thereof; and,

Whereas, in truth and in fact and as the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in this indictment, then and there well knew, each and every person who should purchase any of said shares of stock from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or from said corporation, namely: United States Cashier Company, would suffer and sustain a loss on account of said transaction of all sums of money which any of said persons should pay over or deliver to said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, or to said corporation, namely: United States Cashier Company, in exchange or payment for said shares of stock.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy so entered into by

said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, carried out, carried on and effected by the further means, methods, manner and plan, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, to purchase said shares of stock from said corporation, and from said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell and to pay over and deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, money and property in exchange and in payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell would from time to time during the existence of said conspiracy fraudulently and dishonestly publish and cause to be published, false

and untrue written and printed statements of the assets of said corporation, and false and untrue written and printed statements of the liabilities owed by said corporation, and false and untrue written and printed statements of the financial condition of said corporation. That in said false and untrue statements of the assets of said corporation, and in each, every and all thereof, the assets of said corporation would be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, stated to be sums greatly in excess of the true value of all of the assets of said corporation; that in said false and untrue statements of the liabilities owed by said corporation, and in said false and untrue statements of the financial condition of said corporation and in each, every and all thereof, there would be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, omitted therefrom liabilities owed by said corporation amounting to more than the sum of one-half million dollars.

That it was a further part and portion of said wilful, unlawful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public gen-

erally, should be carried out, carried on and effected by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, selling said shares of stock to the said "INVESTORS" and to divers other persons to the Grand Jurors unknown, in the following states, namely: Oregon, Washington, California, Idaho, Montana, Wyoming, Utah, Texas, Iowa, North Dakota, Michigan, Illinois, Colorado, New York, and many and divers other states to the Grand Jurors unknown.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that the said defendants would so manage and control the business affairs of said corporation, namely: United States Cashier Company, to the end that more than twenty-five per cent of all of the sums of money which should be by the said "INVESTORS" and by divers other persons to the Grand Jurors unknown, and by the public generally, paid over, delivered and transferred to said corporation, namely: United States Cashier Company, and to said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, in exchange and payment for said shares of stock, would be appropriated by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu,

O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell to their own use and gain.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that said scheme and artifice to defraud the said "INVESTORS" and divers other persons to the Grand Jurors unknown, and the public generally, should be by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell carried out, carried on and effected by the further means, methods, manner and plans, that is to say: that for the purpose of inducing, inciting and procuring the said "INVESTORS" and various and divers other persons to the Grand Jurors unknown and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, and to the said corporation, namely: United States Cashier Company, money and property in exchange and payment therefor, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, would increase the selling price

of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each; from a selling price of twenty dollars each to a selling price of thirty dollars each; and from a selling price of thirty dollars each to a selling price of fifty dollars each.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy, so entered into by the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, to execute the said scheme and artifice to defraud, and to attempt so to do by placing and causing to be placed in the Post Office of the United States, at Portland, in Multnomah County, Oregon, and causing to be delivered by the Post Office establishment of the United States, the said newspapers, pamphlets, catalogues, circulars and letters, and other letters to be written by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, which said letters would request the said "INVESTORS" and divers other persons to the Grand Jurors unknown, to remit and to pay to the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E.

Muraine and Oscar A. Campbell, and to said corporation, namely: United States Cashier Company, money in payment and exchange for said shares of stock, all of said newspapers, pamphlets, catalogues, circulars and letters, to be sent and delivered by the Post Office establishment of the United States to the persons to whom addressed in pursuance of said conspiracy.

That it was a part and portion of said wilful, unlawful and felonious conspiracy so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, that the said conspiracy, combination and agreement aforesaid should and would continue from the said 1st day of September, 1910, until and including the 1st day of January, 1915; that said conspiracy was to be a continuing conspiracy, and that it was to continue at all times between the 1st day of September, 1910, until and including the 1st day of January, 1915, and that at and during all of the times and dates, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell would continue to be parties to said conspiracy and would continue to commit the said acts and crime hereinbefore set forth in detail.

That the said wilful, unlawful and felonious conspiracy, combination and agreement, aforesaid, so entered into by the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonne-

well, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, on or about the 1st day of September, 1910, continued from the date of said conspiracy until and including the 1st day of January, 1915; that at and during all of the times and dates between the said 1st day of September, 1910, and the 1st day of January, 1915, said wilful, unlawful and felonious conspiracy, combination and agreement was continually in existence and in operation, and at and during all of said times the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell continued to wilfully, unlawfully and feloniously conspire, combine, confederate and agree together to commit the said crime hereinbefore set forth in detail.

1. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, B. F. Bonnewell, did afterwards and on, to wit, the 6th day of February, 1914, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and

there addressed to Mr. Bert Sallaberry at Elmdale, Montana, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter, which said letter was and is as follows, to wit:

“Portland, Oregon,
Feb. 6th, 1914.

Mr. Bert Sallaberry,
Elmdale, Montana.

Dear Sir: As per your agreement with me you were to send me five hundred dollars more to apply on your note before this date providing I extended one thousand dollars until shearing time in 1914. So send the above amt. by return mail or I will have to turn the note over to an Attorney for collection and that means a lot of costs.

Yours Resp.

B. F. Bonnewell,
1108 E. Flanders St., Portland, Oregon.”

which said letter had theretofore and on February 6, 1914, been written and executed by the said defendant B. F. Bonnewell; with the intent then and there in the said defendant, B. F. Bonnewell, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Elmdale, Montana; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and

artifice to defraud, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell had theretofore, as hereinabove alleged, conspired, combined, and agreed to devise and to execute;

2. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to wit, the 23rd day of July, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. E. Klein, at Everett Building, No. 4th Avenue, and 17th St., New York, N. Y., and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary.
F. H. Gloyd,	F. M. LeMonn,
Treasurer.	Gen. Sales Manager.

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing Change-making, Recording
Coin-paying Machines.

Automatic Cashier for	Visible Listing and
Banks, Pay Rolls, etc.	Adding Machine.

Automatic Change-computing Machine for De-
partment and Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon.

July 23, 1912.

Mr. E. Klein,
Everett Building,
No. 4th Avenue, and 17th St.,
New York, N. Y.

Dear Sir:—

Your letter of the 18th instant is received and in answer will say that the writer had quite a talk with Mr. Levi when he was here in Portland and we showed him our factory and gave him such information as we could. He was quite busy with his duties at the Elks Convention and we were not able to show him around as extensively as we would liked to have done.

In regard to stock, Mr. Levi asked us to make a proposition with reference to terms, etc., but did

not indicate what kind of a proposition would be satisfactory to you. With reference to terms, I can furnish you with fifty shares of stock at the rate of \$15 per share as stated to you in our letter of June 21st, and also can arrange to cancel another subscription which was sold at \$15 and turn that over to you also. In both these cases the parties have been unable so far to meet their payments, and one we are ready to cancel and the other we will cancel at once if we hear from you favorably and you wish to take it over. We probably would have to cancel it anyway.

As to terms, we would like to have you take this stock as nearly on a cash basis as possible for the reason that it is now while we are extensively engaged in manufacturing dies, having arranged with Sloan & Chace of Newark, N. J., for several thousand dollars' worth to be made as fast as they can do the work, and also keeping up the work of die making and the work we can do on the manufacture of machines prior to getting all of our dies, that large demands are made on us for ready cash. Also at this season of the year, while of course an amount of this kind is not sufficient to cause any great or serious difference, we would like to keep our reserve fund up to as high a point as possible as collections, both personal and for the company, are much slower now than they will be later in the season after sixty or ninety days. However, we can allow you to pay one-half the amount down, being the amount we offered you in our June 21st letter,

and will give you sixty to ninety days on the balance, you to give us

E. Klein—Page 2.

your note for the amount. We trust this arrangement will be satisfactory to you.

We recently sent you a report of the stockholders' meeting which I hope you received all right. We have been continuing our work stronger than ever since the annual meeting and since the report was written, and while of course it is a large and expensive undertaking, we are in such condition that we can see the daylight ahead both as to time and the financial support necessary to carry our undertaking to a successful termination. In fact, there is no question now confronting us which we will not be able to overcome without serious inconvenience, and the getting of our machines on the market at an early date is absolutely assured.

We are also developing a Currency Paying Machine which we have to a point of demonstrating so that we know it will meet with the approval of the commercial world, and this with our Computing Machine and the small Change Maker, which we are also getting ready for the market, will make a family of machines that cannot fail to give profitable returns to our investors.

Of course, at this time we are confining all of our effort so far as the manufacturing end is concerned, to the Bank Cashier machine as scattering our efforts in so many directions would result in

unnecessary delay in getting to the market with our product. However, the standardizing and developing of other models is being carried forward and now that the standardizing of our commercial Cashier is practically completed, another one of our machines will be taken up and placed in form for commercial manufacture. Our subsequent models, of course, can be handled much quicker and with less outlay than our first machine inasmuch as the standardizing of the Cashier alone works out the standardizing and development of something like eighty per cent of the other models.

Kindly let us hear from you as soon as possible so we will know whether you are going to take this stock.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

President."

which said letter had theretofore and on July 23, 1912, at Portland, Oregon, been written and executed by the said defendant Frank Menefee, with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at New York, New York; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants,

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

3. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to affect the object thereof, the defendant herein, Frank Menefee, did afterwards, and on, to wit, the 7th day of June, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously, place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Dr. A. A. Millikan, at Fort Jones, Calif., and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary

F. H. Gloyd	F. M. LeMonn
Treasurer	Gen. Sales Manager

UNITED STATES CASHIER CO.

Manufacturers.

Automatic Computing

Change-Making, Recording

Coin-Paying Machines.

Automatic Cashier	Visible Listing and
for Banks, Pay Rolls,	Adding Machine
etc.	Automatic Change-Computing
	Machine for Department and
	Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

June 7, 1912.

Dr. A. A. Millikan,
Fort Jones, Calif.

Dear Sir:

Replying to your letter received today and also confirming our wire will say that I will give you a statement of the patents and applications owned and controlled by this company. You will notice we have designated them as case A, B, etc.: This for our convenience in reference to letters or telegrams to our attorneys in Washington. You will also notice that in Case A. and Case B. patents have been issued. These are assigned on the records of Washington direct to this company. Cases A. C.

and D. are at this time allowable. In other words the claims have been granted by the department and we have been duly notified to that effect and we can have the patents allowed and issued any time on payment of the final government fee of \$15 each. These cases we are holding unissued for reason that the life of the patents does not commence to run so long as they are unissued and we can also rewrite our claim broadening them as the machine develops so as to strengthen it in every respect and finally have issued a patent much broader in its *skope*.

In the other cases the applications are on file with perhaps one or two minor exceptions and have been regularly assigned, at the time application was filed, to this Company. To be absolutely explicit as to the ownership of the patents will say that the title to all of these patents and applications is in the United States Cashier Company; no contract existing that can in any manner forfeit them to any other person. Moreover, they are paid for in full at this time, with the exception of about \$25,000 on our Bilyeu contract which is not yet due. Non-payment of the amount due would not effect the company's title or right to the patents. We mention this to be explicit that no one has any claim upon our patents whatever, but of course the small balance unpaid will be

Dr. A. A. Milliken———#2.

readily taken care of and is not an embarrassing indebtedness against the Company at all.

The cases referred to are as follows:

Case A°

This application has resulted in Letters Patent No. 886, 307, issued to Thomas I. Potter, April 28, 1908, regularly assigned to the Company, and covers particularly a selective machanism of the type using a selector plate or plates traversing the path of movement of the ejecting devices, and controlling the operativeness or inoperativeness of the same. The patent does not limit us to handle controlling means, as we are at liberty to employ key mechanism instead.

Case A.

This application is directed to the original Bilyeu invention and especially the arrangement of parts including the selector, ejector and actuator devices which are used in an analogous arrangement in our latest machine.

Case B.

Letters Patent No. 985,135, issued to Thomas Bilyeu and William S. Overlin February 28, 1911, have resulted from this application and protects quite broadly a later embodiment of the selector mechanism comprising selectors which set the ejectors in operative position. Our new machines will employ the subject-matter of this patent quite fully as we have found it unnecessary to depart therefrom.

Case C.

This is an application of Messrs. Bilyeu, Overlin and Gridley, and is directed particularly to the special type of rotary actuator identically as employed in the Overlin computer. We have some very valuable claims in this application to said subject-matter, and furthermore, to the actuator mechanism as associated broadly with the printing mechanism and key release mechanism.

Case D.

This is an application by the same inventors as in case "C," and is really to a division of case "C," covering the printing mechanism embodying the reciprocable type bars and indexing means therefor. We adhere to this general idea in the white Cashier.

Dr. A. A. Millikan———#3

Case E.

This application is designed to cover the Bilyeu Change-Maker or Computer, a machine incorporating the selector principle of the machine of application, Case "B" but modified only to afford a computing or subtracting action.

Case F.

The street car machine is the subject-matter of this application and the claims are especially directed to the construction whereby the handle or actuator of the other machines is dispensed with and the keys are used to initially select and subsequently eject the coins by a very simple but extremely effective co-operation of the keys with the ejectors.

Case G.

This is an application by William S. Overlin to cover the bill paying mechanism alone or as used in combination with a coin paying section, the mechanism being capable of handling the bills in flat condition necessary from a commercial standpoint.

Case H.

The machine of this application is the Overlin computer or change-maker and the mechanism covers computing means for mechanically subtracting or computing to eject coins representing the difference between the amount received and amount of purchase.

Case I.

This is the application for the White Bank Cashier in its completed commercial form and while the machine includes certain mechanisms of the several applications before enumerated in addition broad protection is being obtained for the idea of combining an adding section with a coin-paying section so that, if desired, the adding section may be used alone as an ordinary adding machine or may even be constructed and used as an adding machine without being attached or combined with a coin paying mechanism. I feel that this application is one of the most important of all our cases. While it will adhere in many respects to other applications granted or allowable, it will fully cover all of the principles of the machine in its final, developed commercial form. From our research, we know that the

principles of the design and construction of this machine particularly, will be fully protected in every respect. Furthermore, the design and mechanism used in this machine will control in all other machines placed upon the market by the company, especially the computing machine, so that the protection afforded by our application for patent, as well as the mechanical standardizing and development of the

Dr. A. A. Millikan———#4

machine will answer almost entirely in the completion of our other models.

Case K.

The general design of the money handling machine involving the relative positions of the coin receptacles, open money chute common to all of said receptacles, bank or banks of keys at the right of said receptacles and operating handle at the right extremity of the machine, is the subject-matter of this application.

Case L.

This application is directed to the special replenishing alarm associated with all of the receptacles and affording a signal to warn the operator of the machine when the supply of coins in the receptacle is diminished to a predetermined point. This alarm is used in the White Cashier but is being covered separately since it is adapted for application to any money handling machine of the general type of our cashier.

Case M.

This application is on our Currency Paying Machine, which is an improvement and practically speaking, new and original as affecting the handling of currency. Before taking this as the method of handing out paper we have had a search made by our attorneys at Washington and we are advised that we will be able to obtain the broadest protection upon this character of machine, it embodying an entirely new principle as applied to the handling of paper money, and the only method handling it which, in my opinion, would prove a commercial success. We have not had a description of this machine or the principle by which we expect to handle currency therefore, we beg to advise you that this machine will handle currency in flat condition, without any necessity of loading the machine except to place in the proper receptacle a package of bills just as they are found in the bank. They are lifted out on a pneumatic principle one by one as accurately and as rapidly as the Cashier Machine works in the handling of coin alone. Moreover, it will be what might be termed the upper deck of the machine so that it will not materially increase the size of the machine, but handle the paper over the coin tubes. In this way it will be so arranged that the operator can pay either coin or currency at will by means of a shift key engaging the currency or coin paying mechanism, as the case may be. Of course, the machine will be made to handle small change in coin, and it will operate to handle it and also the larger denominations in currency.

Dr. A. A. Millikan———#5

The foregoing will answer fully the questions asked in your letter and we presume that nothing further need be said by us with reference to the company's affairs, as we feel absolute confidence in Messrs. Hopson and Hunter and know they would not make any representations to you that is not borne out by the facts and both of them having been in Portland so they have personally seen our factory, etc. They have complete data and knowledge as to the progress we have made. However, we should be very glad indeed to answer any further questions you see fit to make.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

FM:E

President."

which said letter had theretofore and on June 7, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment, of the United States to the said address at Fort Jones, California; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter,

O. L. Hopson, P. E. Muraine and Oscar A. Campbell had therefore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

4. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to wit: the 30th day of January, 1913, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. Jos. Hunter, at Reno, Nevada, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

“January 30th, 1913.

Mr. Jos. Hunter,
Reno, Nevada.
Dear Sir:

We are trying to round out our stock selling as rapidly as possible. *The fact is we have deals on at \$30.00* which will amply take care of the Company's *treasury stock*, and we have to handle, in order to

keep the market clear, a quantity of stock for private parties, and we are trying to take off the market all we possibly can. We can handle this situation very nicely if we can rush up our miscellaneous sales in some way.

I can not put this proposition up to very many and do not want to except in isolated places where it won't interfere with other sales and our stock selling generally. You are one of perhaps two or three that we have working for us, that we can put this confidential proposition up to, and we would not put it up to you except that you are going to a new location where I think there will not be much communication between the stockholders there are other places. If you do not want to work the proposition in this way, all you have to do is to say so and go at it in the same old way that you have been doing.

What I want to propose is that you could work like you did in northern California last summer at \$20.00 per share, only at that rate we would have to realize \$15.00 per share, which would only leave you a commission of 25%. This advantage in the price would rush up the business so that you would make more money at that commission than at 30% insisting on selling at \$30.00 per share.

You understand if you work in this way that your subscriptions must be taken on the blanks that read Joseph Hunter, and your argument would be that the Company stock was practically all placed

and all provided for by contracts already made with a possibility of one or two failing and having to be sold to outside parties. With such a contingency no Company stock was to be had, but that you could sell a couple hundred shares or whatever amount you think proper to work on, and then sell it as long as you had sales, regardless of whether

#2/ To Jos. Hunter, 1/30/13

the amount runs out or not, and the stock you sell is either some of your previous sales at that price which your people have not been able to pay for, and which you can get by turning in the money quickly, or else that you got hold of a small block from a party that was hard up and had to realize some money, and in that way you were able to let them have the inside figure, unknown to the Company of course. As a matter of fact, this is a private matter and must not be considered as Company business.

I do not need to say more to you as you are so used to these situations, and will readily realize whether you had better work it this way or not, and if so on what plan you want to work. Whatever plan you do adopt if you go to working this way, write me fully personally, so I will know what to say if inquiries are made.

Yours faithfully,

FM:HM"

Frank Menefee."

which said letter had theretofore and on January 30, 1913, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee; with the intent

then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Reno, Nevada; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

5. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to wit, the 27th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. L. H. Robinson, at Moorcroft, Wyoming, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in

said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary
E. O. Genert,	F. M. LeMonn,
Asst. Gen. Sales Mgr.	Gen. Sales Manager

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing

Change-Making, Recording

Coin-Paying Machines.

Automatic Cashier	Visible Listing and
for Banks, Pay Rolls,	Adding Machine
etc.	Automatic Change-Computing
	Machine for Department and
	Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon, 3/27/12.

Mr. L. H. Robinson,
Moorcroft, Wyo.

Dear Sir:—

We take pleasure in acknowledging due receipt through our Mr. B. F. Bonnewell of your subscription dated Mar. 4/12 for fifty shares of the capital stock of this Company at \$30.00 per share, total \$1500.00, together with payment on same of \$100.00 cash, \$400.00 in thirty days and \$1,000.00 on or before six months from date.

Your certificate will be delivered when final payment has been received. Make all future pay-

ments payable to the United States Cashier Company or B. F. Bonnewell.

For some time we have been operating our factory at Kenton full blast, and will be able to deliver our first machines within a very short time. We will turn them out in increasing numbers each month after the first machines are completed, so that by the latter part of the year we should have a sufficient number of commercial machines on the market to place us upon a substantial paying basis, and declare to the stockholders a reasonable dividend.

Thanking you for past and awaiting your future favors, we remain,

Yours very truly,

UNITED STATES CASHIER COMPANY,

F. M. LeMonn,

F.ML-HES

Sales-Manager."

which said letter had theretofore and on March 27, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Moorcroft, Wyoming, and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.

Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

6. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to wit, the 28th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. J. J. Bauer, at San Francisco, California, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary
F. H. Gloyd,	F. M. LeMonn,
Treasurer	Gen. Sales Manager

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etc.	Automatic Change-Computing
	Machine for Department and
	Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

March 28, 1912.

Mr. J. J. Bauer,
San Francisco, Calif.

Dear Sir:

We have your favor of the 26th and have carefully noted contents. We are sorry that we inadvertently failed to reply to your communication of the 7th inst.

We cannot see anything peculiar in the fact that brokers are offering 200 shares, or any part of sale, of this Company's stock at \$13.50, when you remember that the stock was selling at par, \$10 per share, up until December 12, 1910, and at \$11 up until February 1st, \$12½ up until July 1, 1912.

Where there are more than 3000 stockholders who have subscribed for practically, in round numbers, 100,000 shares, it is not likely, but is absolutely true, that some of them will become financially embarrassed and will have to offer for sale or trade, some, if not all of their property. When a part of this property is U. S. Cashier stock it is not to be wondered at that it gets into the brokers' hands and in many cases they are forced to sell for less than they paid. However, the broker can make a profit when he sells at \$13.50 if the earlier subscriber of this stock sells to him for the same price he paid, \$10, \$11, or \$12.50.

For instance, consider this matter personally and ask yourself the question: If you were hard up for money and had to have it on other deals in order to save your property or your business, which may represent your principle interest, you would likely begin trading or selling, even at a sacrifice, some of your other property which was not as necessary for your comfort or livelihood. We would see nothing strange in the fact that stock was offered through brokers even if at \$5 per share, unless it represented dissatisfaction on the part of the stockholder, and this reason for letting go of the stock has never been presented to our notice.

Mr. J. J. Bauer———#2

The stock is selling freely at \$30 per share and if the Company could legally, or believed it wise, to speculate in stock, we would buy up this broker's stock and sell at an enormous profit, but our reason

for offering stock to the public is simply and solely to enable us to get hold of the necessary funds to manufacture and place these machines on the market, and this Company has not deemed it wise to begin buying stock offered on the curb, no matter what the price may be. If you will talk with any curb broker you will find that he considers it a very healthy condition when he can get over par for stock in which he may be trading and he will only offer par and above because the Company's condition has been favorable enough to enable them to get a much higher price through their representatives who are eternally on the hunt for a prospective investor.

A stockholder's letter will be forwarded within a few days which will advise you that we have completed our Standard Commercial Bilyeu Automatic Cashier and that it has been working perfectly in every test devised for it. We are now manufacturing in commercial quantities and will be able to turn out machines from month to month in rapidly increasing numbers, until the Fall of the year when we believe we can turn out several hundred machines per month.

The orders we now have on hand and are taking from daily demonstrations will keep us busy for the next six to nine months to come, and we know we are entering a season of great prosperity. We believe the stockholders have reason to be congratulated upon becoming partners in this new industry.

Assuring you it will be our pleasure at all times to answer any and all questions concerning the Com-

pany and thanking you for past favors, we beg to remain,

Yours very truly,

UNITED STATES CASHIER COMPANY,

F. M. LeMonn,

FML:E

Sales-Manager."

which said letter had theretofore and on March 28, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at San Francisco, California; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to device and to execute;

7. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on,

to wit, the 19th day of August, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. H. T. Johnson, at Grand Forks, N. D., and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary
F. H. Gloyd,	F. M. LeMonn,
Treasurer	Gen. Sales Manager

UNITED STATES CASHIER CO.

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Automatic Cashier	Visible Listing and
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etc. Automatic Change-Computing

Machine for Department and

Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

August 19th, 1912.

Mr. H. T. Johnson,
Grand Forks, N. D.

Dear Sir:—

Replying to your letter of August 10th, in which you enclose one of the same date addressed to you signed by Mr. Frank B. Feethan, will say:—

As stated in the annual report, cases A° and B have resulted in letters patent being issued; in cases A, C and D, the patents are allowed, meaning that all of our claims have been allowed and that the issuance of the patents is being held up because of our not having paid the final government fee and not having asked for their issuance.

We have not done this because we can renew our application by re-writing the claim each year, thereby lengthening the life of the patent and enabling us to write into our original application many claims that will develop themselves as our standardizing and further development progresses.

In the other cases as indicated, the applications are filed, properly assigned to the Company by the inventors.

As to having had the records examined as to infringements, will say that our Attorney Mr. John F. Robb, has for some months past been devoting considerable of his time to the examination of the entire art of coin paying machines, particularly as adapted to the adding machine or combination, and his reports to us from time to time indicate that we

will be fully protected and that all of our applications will be reasonably free from any chances of infringement whatever on any other known patent in the art.

The adding machine art is old and we can not claim any basic protection but our mechanism or machine, as we might say, is worked out entirely in a different method from any known adding machine, and will form the basis of a patent on the mechanical construction of the machine.

#2 To H. T. J. 8/19/12.

Were we going into the adding machine field alone, we would have to expect competition from all existing adding machine companies, although we believe we could successfully compete with them, because of the simplicity of our machine, and the fact that it contains less parts and is more reliable, as well as performing certain offices and work that are not performed by the better known machines.

In the coin paying art, we are occupying a field practically new, in so far as any machine has been manufactured that would work in connection with the adding and listing device, and on this point and part of our machine, we are depending for our monopoly.

Our attorneys have advised us, as I stated in my report, that we have the fullest protection with reference to this machine, the reference being to case "I," and as stated, the mechanism and principle of this machine will control all of the other machines

we are placing on the market, and it will be found impracticable, if not impossible, to perform the work our machines will do, without going at it in a way so similiar to our machines that it will be an infringement.

This mechanism is quite fully covered in case B, which has already gone to issue, and the new applications are intended more to cover the re-designing and certain minor improvements, than to obtain the protection we need, as that is very fully covered by cases A, B and C, already issued or allowable.

We have had a special report from our Attorney with reference to the patent ability of our currency paying device, case M. We are advised that the principle we are applying with reference to the handling of currency, has never before been used in handling money, and that we can obtain protection therefor, and that there will be little or no likelihood of any previous patent or application.

The remark of Mr. Feethan that there is a great similarity between our machine and the Cash register is really not well founded in fact, inasmuch as the cash register has not attempted to do anything in the way of handling money. Its adding and listing devices are perhaps similiar to ours, but those things are old and our use of them will not conflict with them in any manner, all the protection they have being their particular mechanism, and perhaps very little in that regard on account of the age of the patents.

The cash register, as I have stated, does not attempt to combine with their listing and accounting features any device

#3. To H. T. J. 8/19/12/

whatever for the computing of change or the paying of money or change by mechanical means, that being done entirely by the individual or person operating the cash register.

With our machine, the patents cover the principles of having the machine automatically pay the money called for by the pressure of the keys, as well as add and list it. Also our computing machine application is directed to the handling of money, mechanically computing the difference between two amounts, and automatically paying the amount of money representing this difference, as well as adding and listing the amount tendered and the amount of the purchase.

This application with the protection afforded in cases A°, B and C, and the new application on the re-designed and standardized form of the cashier machine, case I, cover all of the principles of our machines, so that any other machine will be merely the re-embodiment of these principles with certain improvements or changes so as to make them better adapted to slightly different purposes.

In regard to litigation, will say that we have never had any intimation of litigation of any kind with reference to any of our patents and have not

had any one question the validity of any of our claims.

There is still approximately twenty thousand shares, par value of \$200,000, stock in the Treasury of the Company, a portion of which is represented by subscriptions that we are cancelling from time to time on account of inability, for some financial reason, of the subscribers to make their payments.

The stock that is now being sold is Treasury stock of the Company, and the entire amount for which the sale is made goes in the Treasury of the Company, less the selling agent's commission. No person receives any extra benefit or rake off out of the premium for which the stock is sold above par value.

Trusting that this will answer your questions, but assuring you that if you desire any further information, we will be more than pleased to write you further, we remain,

Yours faithfully,

Frank Menefee,

FM:MM

President.

which said letter had theretofore and on August 19, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee, with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Grand Forks, North

Dakota; which said letter was then and thereof and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined and agreed to devise and to execute;

8. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards and on, to wit, the 29th day of February, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mrs. A. M. Armstrong, at 809 Wright and Callender Bld'g, Los Angeles, California, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Feb. 29, 1912.

Mrs. A. M. Armstrong,
809 Wright & Callender Bld'g.,
Los Angeles, Calif.

Dear Mrs. Armstrong:

Your night letter of yesterday received as follows:

'Englishman member of English Syndicate here for class A investments wants to buy right to manufacture machines England, Germany and France or England alone. If we have foreign protection can have sale completed forty eight hours by cable. Financial standing established in Los Angeles. Desires immediate reply. Other deals pending.'

We have replied to you as follows:

'Foreign rights of machines protected but will be necessary for personal interview with party in Portland. If sufficiently interested to come to Portland kindly advise by wire.'

We don't think there could be any good come from any correspondence of any party over such a serious matter when a ride of a day and one half would bring us together and matters could be taken care of in so much better way, as to warrant a personal interview; hence we feel that as we stated in our wire, these matters must be taken up at the home office personally, as we are not sufficiently interested to attempt same by correspondence, inasmuch as it would, in all probability result in anything but a satisfactory manner.

Mrs. A. M. Armstrong——#2.

We want to thank you however for the interest you have taken in the matter and for calling our attention to same and if the party is serious in regard to this matter we will be only too pleased to talk the matter over, as the foreign rights are bound to bring someone much prosperity.

Thanking you for past and awaiting your further favors, we remain,

Yours very truly,

UNITED STATES CASHIER COMPANY,

F. M. LeMonn,

FML:E

Sales-Manager."

which said letter had theretofore and on February 29, 1912, been written and executed by the said defendant F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Los Angeles, California; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined and agreed to devise and to execute;

9. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to wit, the 24th day of July, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. J. W. Brett, at 727 9th Avenue, Lewiston, Idaho, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,
Pres. and Gen. Mgr.

Robert J. Upton,
Secretary

F. H. Gloyd, F. M. LeMonn,
Treasurer Gen. Sales Manager

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing

Change-Making, Recording

Coin-Paying Machines.

Automatic Cashier Visible Listing and
for Banks, Pay Rolls, Adding Machine
etc. Automatic Change-Computing
 Machine for Department and
 Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

July 24, 1912.

Mr. J. W. Brett,

727 9th Avenue,

Lewiston, Idaho.

Dear Sir:—

Your letter of the 18th instant in regard to purchase of stock in our Company at less than par is duly received. Your letter asks for the personal advice of the writer whether you should buy this stock or not, and you state that you have a little money, but have a family to support and are getting along in years.

You must realize that to advise you in a matter of this kind under these circumstances is serious, and if I am at all conscientious, which I certainly am, I could not under any circumstances advise you where I thought there could be the least possible chance of your falling down on the investment.

The stock that is offered you is some stock that has been traded around no doubt and taken over by parties ready to do anything for the sake of realizing a little ready money. So far as we have found no stock we have sold for cash has ever gone on the market at less than the price paid for it, at least

with very rare exceptions where parties were absolutely compelled to have a little ready cash.

The question is also often asked, why, if we can buy this stock so cheaply and our price is \$30. per share, at which we are selling quantities of stock, do we not buy up the cheap broker stock. The answer to this is simply that the company has no legal right to divert its funds in order to buy up and speculate in its own stock. One or two of the other directors and I have purchased some of the cheaper stock which we are holding, but of course our funds are necessarily limited and we can only buy up what we can pay for in cash, and really, we have bought until we have used every dollar of ready cash we are able to let go of. I have paid many thousands of dollars since my connection with the company buying up stock in this way, and still buy a little occasionally when I have the funds on hands with which to handle it.

Page 2.

Now, in answer to your question, will say that the time was a year or a year and a half ago when the future of the company was uncertain in that it was an open question still as to our ability to finance the company and also as to the quality of the product we could turn out for our stockholders. I had great confidence in our future at that time and even then advised my own family and friends to invest money in the proposition which they could not afford to lose.

At this time the company's affairs present an altogether difference aspect. We have ourselves so thoroughly entrenched financially that beyond any question we can place our machines on the market commercially. I have investigated more thoroughly the patent situation and am thoroughly convinced that no complications in that line can arise whereby we will be seriously, if at all, handicapped in placing our machines on the market. We have proven to our complete satisfaction that we have a mechanical ability surrounding us than can handle any mechanical proposition we desire to put up to them. They have demonstrated their ability by the perfecting and standardizing of our Bank Cashier, for which we are now making final dies and which we expect to have on the market within the present year at the outside; when I say on the market I mean in quantities sufficient to return a substantial revenue to the company each month in the way of profits.

In addition to this, we have developed so that we know we will make a commercial success of it, a Currency machine for our machines. We have developed the Computing Machine so that it is without question a success mechanically and it will be one of the best sellers we will put on the market far outrivaling the sales of the Cashier Machine. We are also developing and will place on the market our Lightning Change Maker particularly equipped for street-car service and also for sale of tickets at five and ten cent theaters, and also with a little

changing can make it adaptable for use in small cigar stores, etc. This machine as we can and will put it on the market will be a ready seller and find a ready market all over the United States.

With our success as to our ability to place these machines on the market the future of the company can scarcely be estimated. It sounds almost like dreaming when we tell of the sales we know we can make and the profit that will arise from it, and I feel like I am conservative when I say to you that with all of our models on the market and the factory running at sufficient capacity to anywhere near supply the demand our stock should return not less than from 50% to 100% on the par value. This is very conservative.

We have our factory running employing now about fifty men and have it fully equipped with machinery, everything being paid for to the minute. In addition to this we have our old factory or development shop in which our first models were made,

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still running on experimental and development work on the different types of machines we are expecting to put on the market.

In conclusion I will only say that the future of this company and its prospects I have outlined above are given to you absolutely in good faith with full consciousness of the seriousness of the advice

you are calling upon me to give you, and I certainly consider if you get the opportunity to buy any of this stock at the price you mention, you are passing up a "snap" if you do not buy it to the full extent of your financial ability.

You have no doubt had our letters and literature from time to time, but if you have not received them, will be glad to mail them to you if you will advise us.

Yours faithfully,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

FM-HG

President."

which said letter had theretofore and on July 24, 1912, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Lewiston, Idaho; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined, and agreed to devise and to execute;

10. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, Frank Menefee, did afterwards and on, to wit, the 5th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. John Marshall, at Harney, Oregon, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

“Frank Menefee,
Pres. and Gen. Mgr.

Robert J. Upton,
Secretary

F. H. Gloyd,
Treasurer

F. M. LeMonn,
Gen. Sales Manager

UNITED STATES CASHIER CO.

Manufacturers

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 Machine for Department and
 Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,

March 5, 1912.

Mr. John Marshall,
Harney, Oregon.

Dear Mr. Marshall:

Your favor of some days ago was inadvertently mislaid hence we beg to apologize for not replying earlier to same.

We forwarded you, on or about Feb. 17th, our regular stockholders letter and for fear that same was mis-carried are enclosing another herewith, which will acquaint you with the progress we have been making to date, also that we expect the First Standard Commercial Automatic Cashier to leave the Factory within a few days. This machine has been assembled and doing its work in a most praiseworthy manner, but we want to continue to test it out for a week or ten days yet so that we will be sure that when it leaves the factory there can be no possibility of an error in any transaction it may be called on to make.

The resale stock is selling freely at \$30 per share and as these subscriptions represent those that we cancelled on account of the subscribers being in arrears with payments and make an immense profit

over the first or early selling price and we have confidence that the last few hundred shares to be sold will not be offered at less than \$50. per share.

Now that our machines are practically ready for the market we have every reason to expect a season of great possibility as we have many orders now on our books and have orders coming in almost daily from the most unexpected sources, as well as many of them being entirely unsolicited by us and this rush of orders looks as though it will take us six months or more to catch up with the demand that we now know exists for these machines.

Hoping and believing that the progress will be so rapid from now on that it will please the most critical stockholder and awaiting your further favors, we remain,

Yours very truly,

Frank Menefee,

FM:E

President."

which said letter had theretofore and on March 5, 1912, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Harney, Oregon; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn,

Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell had theretofore, as hereinabove alleged, conspired, combined, and agreed to devise and to execute;

11. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find, and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the said defendant herein, Frank Menefee, did afterwards and on, to wit, the 5th day of March, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. John Marshall, at Harney, Oregon, and at the time of the mailing of said envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

"Frank Menefee,	Robert J. Upton,
Pres. and Gen. Mgr.	Secretary
F. H. Gloyd,	F. M. LeMonn,
Treasurer	Gen. Sales Manager

UNITED STATES CASHIER CO.

Manufacturers

Automatic Computing
Change-Making, Recording
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Automatic Cashier	Visible Listing and
for Banks, Pay Rolls,	Adding Machine
etc.	Automatic Change-Computing
	Machine for Department and
	Retail Stores, etc.

Home Office, Lewis Building.

Portland, Oregon,
February 17, 1912.

TO STOCKHOLDERS:

We are pleased to advise, as you will note above, that on February 1st Mr. F. H. Gloyd became actively identified with this Company as Treasurer, and we have been the recipient of many compliments from bankers and business men of the Pacific Northwest commending Mr. Gloyd as a Banker and Business Man and congratulating this Company on securing his services in handling the financial department of this Company. He has been one of our stockholders for many months past and last year visited with us, looking into the Management of the Company as well as our Manufacturing Depart-

ment and this gave him such confidence in our future prospects that he accepted our proposition to become Treasurer and from now on will devote his entire time and attention to our business.

In order to take up his duties with us, Mr. Gloyd tendered his resignation as President and Manager of a chain of four banks, viz: The State Bank of Prosser, Union Bank of Granger, Grand View State Bank of Grandview, and the Kiona State Bank of Kiona, all in the Yakima Valley, Washington. However, at the present time he is yet the nominal President of the last three named banks as he is being retained as the President only until such time as the directors can elect new Presidents. Previous to his fifteen years' banking experience, he was the first auditor of Benton County, Wash., and for a number of years auditor of Pierce County, Wash., of which Tacoma is the metropolitan city.

You will readily appreciate that no business man holding such responsible positions as Mr. Gloyd held would leave same to go with any corporation if he had any doubt as to his new connection being other than that which offered most substantial promotion, not only for the present, but for all future time; hence we may be excused for taking some pride in making this announcement.

We also desire to announce most substantial additions to our Mechanical Staff. Since the first of the year we have secured a dozen mechanical ex-

perts direct from the Burroughs Adding Machine Co.'s plant in Detroit, which means that we now have fifteen men of the highest class designers, developers and mechanics from that great manufacturing company. We also have many high class mechanics who have been for years with the National Cash Register Co. of Dayton, and other equally as well known specialty manufacturing plants.

#2

There can be no question but with the addition of many thousands of dollars worth of new machinery which has been installed since January 1st, that today this Company is in a position to manufacture most successfully and turn out as good a product as any of these eastern plants which have been established for many years. Our factory payroll now amounts to between \$4000 and \$5000 per month, all of which is being expended along the line of manufacturing our first lot of Bilyeu Automatic Cashiers and Adding Machines.

Our business has already begun to expand to such an extent that we needed the room occupied by our Woodworking Department in order to give additional space for heavy machinery on the first floor; hence we have just completed a separate building into which we have transferred our Woodworking Department and are now ready to let the contract for the new addition to accommodate the Forge or Hardening Department.

The first commercial Automatic Cashier, as previously advised, will be finished and ready to leave the factory by the latter part of this month, which means that we are now practically ready to market our machines. Our salesmen are beginning training to take up the sale of these machines, as the stock selling campaign is practically at an end and the only stock that we are offering is that which has been released by cancelled subscriptions which were made many months ago and not settled for according to contract. As the stock is now selling freely at \$30 per share, you may readily understand that the Company is making a handsome profit on these resales.

After paying every obligation of the Company, including factory and equipment and all development expenses up to the time when our machines are ready for the market, we will still be able to provide a Manufacturing Fund of not less than \$200,000. This will be ample to continue the manufacture of the machines and place them on the market until such time as the proceeds from the sale of the machines will be returning a substantial profit to the Company.

We feel if you have carefully read the above you will agree with us and the experts who have visited our factory, that we have made most substantial progress considering the quality of workmanship and improvements we have made on our Automatic Cashier. It is no exaggeration to state that we have advanced the manufacture of these first com-

mercial machines more rapidly and successfully than has heretofore been either accomplished or attempted by any of the well established manufacturing plants when they have placed a new device on the market.

Hoping that we have your hearty support in the future as we have had in the past, we beg to remain,

Very truly yours,

UNITED STATES CASHIER COMPANY,

Frank Menefee,

President."

which said letter had theretofore and on February 17, 1912, at Portland, Oregon, been written and executed by the said defendant, Frank Menefee; with the intent then and there in the said defendant, Frank Menefee, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Harney, Oregon; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

12. And the Grand Jurors, aforesaid, upon their oaths, and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant herein, F. M. LeMonn, did afterwards, and on, to wit, the 8th day of April, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States post office establishment, to wit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. L. H. Robinson, at Moorcroft, Wyoming, and at the time of the mailing of said sealed envelope, aforesaid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, to wit:

“Portland, Oregon, April 8, 1912.

TO STOCKHOLDERS:

At last we are able to announce that our Standard Commercial “Bilyeu” Automatic Cashier has been completed and is working perfectly in every test suggested or devised for it. This feat of re-designing and standardizing the machine has been accomplished in much less time than has ever been done by any of the old established manufacturing companies. The demonstrating model of our Automatic Cashier (which is the only one we have shown to the stockholders when soliciting their financial support) has a keyboard of four rows or banks and

its capacity for paying and listing is from one cent to \$99.99. In addition to the above the only work this model performed was that of making change for \$1, \$5, \$10 and \$20.

Comparing this demonstrating model with the Standard Commercial Machine, which is now finished, you will be able to at least partially understand what a tremendous and difficult task has been before us. The work the redesigned machine performs is as follows:

1st—Pays any amount from one cent to \$200.00.

2nd—Prints an instantaneous, visible and permanent record on the recording tape of any amount paid out or listed from one cent to \$9999.99.

3rd—Gives a visible total of each amount as paid, and also prints on the recording tape sub-totals and grand totals at will.

4th—Prints the amount paid on the face of the check by means of a duplicate printing device.

5th—Makes change for \$1, \$5, \$10 and \$20 by using one key only; the change given for each being the most serviceable—even down to a nickel for streetcar fare.

6th—Has nine denominational keys, permitting the operator to pay any number of any coin at will, or to make change in this way for any arbitrary amount desired without disturbing the keyboard or previous totals.

7th—Has removable coin-receptacles permitting storing of same in vault without unloading the coin; also permitting more than one cashier to use the machine by having his own change or funds in separate coin-receptacles.

8th—Signal bell rings when any coin tube is becoming depleted (but not empty) thus enabling the operator to replenish same before a false transaction can be made.

9th—The Cashier may be used as a visible adding and listing machine, without reference as to paying money, by depressing a shift key which disengages the paying mechanism, allowing adding and listing without removing the coin-receptacles.

If the operator has paid out \$5750.10 and then desires to add or list a number of checks, without paying any money, all that is necessary is to depress the total key, which would print a permanent record on the tape of the amount paid out and also clear the totaler. He would then depress the non-pay key and add or list as many transactions as he desired and total the same. To again make payments he would simply depress the keys representing the amount originally paid out (5750.10) as shown by the printed total and pull the lever which would re-read this amount into the totaler, without ejecting the same, and then release the non-pay key and the machine is again ready to pay, just as before adding or listing the checks.

This machine has a flexible keyboard permitting the correction of an error in any one row or bank of keys without resorting to the use of an error key, and is also equipped with a repeat key to be used when the operator desires to make duplicate transactions in paying, listing or adding. We can manufacture larger models which will pay up to \$1000 if any Bank or Pay Master desires same, although the hundreds of demonstrations we have made to the leading Bankers and Pay Masters has convinced us that there will be very few, if any, required to pay more than \$200.00 in coin, as they state that 95% of all the checks cashed are less than \$100 each.

Having finished the re-designing and standardizing, all our work is now devoted to manufacturing this Cashier, and, as we have a great number of parts ready for assembling, we are now practically ready for the market in the way of taking orders and making deliveries. We have more orders on hand than we will be able to fill in the next six months, and orders are coming in continually at a rapid rate.

Our stock selling campaign is practically at a close but in order to retain our splendid selling force until the machines are ready for the market, we are using them in the re-sale of stock previously subscribed but not settled for. This re-sale stock, subscribed for at a much lower figure than at the present price of \$30 per share, gives a handsome profit to the Company. Our financing, as you know, has been most successful and the substantial subscrip-

tions will furnish us ample funds for the manufacture and sale of the machines until the proceeds from same will take care of all future needs. Many of the heavy stockholders who have visited the factory from time to time are unanimous in their praise of the Management for being able to construct a machine with such wonderful utility and perfect mechanism in such a short length of time, although we know this work of redesigning and standardizing has severely taxed the patients of many of our shareholders who have not had the privilege of visiting the factory and seeing the progress made.

We are enclosing herewith a page of this month's issue of the "Pacific Banker" and you will find thereon the impression which our factory and machines have made upon Mr. Lydell Baker, the editor of this, the only exclusive banking and financial paper of the Pacific-Northwest. A careful reading of what this keen business man thinks of this Company and its product after having made most thorough investigation and tests is convincing that this Company is not only destined to make History for Portland, but has entered upon an epoch of great earnings for the shareholders who have been fortunate enough to secure stock in this enterprise.

We have been favored with a visit to our general offices and factory by a great number of both Portland and out-of-town shareholders, and as many of you are either manufacturers or have visited other manufacturing plants, we earnestly request each

and every one of you to make mental note of the things you see and write us on any subject or thing you observe that you believe could in any way be for the betterment of our Company and product.

Yours very truly,

UNITED STATES CASHIER COMPANY,

By F. M. LeMonn, Sales Mgr."

which said letter had theretofore and on April 8, 1912, at Portland, Oregon, been written and excuted by the said defendant, F. M. LeMonn; with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the postoffice establishment of the United States to the said addressee at Moorcroft, Wyoming; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewll, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

13. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of the said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the de-

fendant herein F. M. LeMonn, did afterwards and on, to-wit, the 7th day of April, 1912, at Portland, Oregon, and within the jurisdiction of this court, knowingly, unlawfully and feloniously place and deposit and cause to be placed and deposited in a post office and postal station of the United States postoffice establishment, towit, the United States post office at Portland, Oregon, for mailing and delivery and with postage fully prepaid thereon, a certain sealed envelope then and there addressed to Mr. B. F. Bonnewell, at Northern Hotel, Billings, Montana, and at the time of the mailing of said sealed envelope, aforeasid, there was then and there enclosed in said envelope a certain letter which said letter was and is as follows, towit:

“April 7, 1912.

Mr. B. F. Bennewell,
Northern Hotel,
Billings, Mont.

My Dear Bonnewell:

We are sending you herewith a letter which we are mailing to all the stockholders today and would ask you to read same carefully so that you will know just what we are saying to them and also be able to present the Company's affairs in such a manner that no one can doubt our sincerity regarding the progress we are making.

We are especially pleased to call your attention to the last page of this month's issue of the “Pacific Banker” as you will find thereon a writeup on our wonderful machines and the factory by Mr. Lydell Baker, the managing editor, to whom the writer had

the pleasure and privilege of showing the machines and factory for the best part of two days last week.

This writeup should be invaluable to you as a canvassing document. If you read it carefully and inform your prospective investor that the "Pacific Banker" is a weekly periodical, going to all the bankers of the Pacific Northwest, inasmuch as it is the only banking paper published on the Coast and the editor, Mr. Lydell Baker, is a keen business man who of course keeps in touch with the financial interests and doings of the entire Pacific Coast, we believe the editor's philosophizing of the fame that will naturally come to Portland because of its being the home of the U. S. Cashier Company is not overdue and is entirely within both the possibility and probability of the very near future.

This is in no sense an advertisement, as no editor is going to go on record in this manner and jeopardize his position in the business world for an insignificant sum which would be required to pay for the space devoted to this article. We could have taken the editor out to our factory many months ago and have had this writeup of our industry appear in this valued periodical but we preferred to wait until such time as a careful investigation by this keen business man could

Mr. B. F. Bonnewell—#2

be nothing else but a great boost to this Company, both financially and from a manufacturing point of view, as could only be evidenced

by a visit to our factory and careful examination of its equipment, and to see this redesigned Standard Commercial Automatic Cashier in actual work. Mr. Baker had this machine demonstrated for him most thoroughly as we put it to every test that he could possibly think of and in each and every particular it worked perfectly—in every instance paying out the proper amount of coin, giving an instantaneous visible and *perment* record, printing the amount on face of check, adding same to the previous total, printing sub-totals and totals at will, repeating the same transaction as often as desired by depressing the repeat key and then by the use of the shift key or non-pay key, adding and listing and sub-totaling the same at will, without reference to the paying out of money.

This writeup surely cannot help but enable you to close some business the very day that you receive it and I mean by that, some business you were unable to close and perhaps felt was lost or lost until some future time. If you will but take this "Pacific Banker" with you again call upon some of these prospects and give as a reason, that you want him to see this splendid writeup by a disinterested party and the only banking paper of the Pacific Northwest, so that your prospective investor will have that verification from an expert unselfish source it should convince him that he is making a mistake to delay this matter a single day.

It is a positive fact that if you are to participate in the prosperity that should come to each of our

representatives in this closing campaign of \$30 stock, you should use your hand to the best advantage as well as put forth the greatest possible amount of energy and effort, as the advance to \$50 may take place almost any day and without any previous notice.

Hoping our efforts here at the office, in the way of this writeup, will prove not only a boom to us with the banking fraternity who will use our machines but will also be of great value to you in closing business, we beg to remain,

Yours very truly,

UNITED STATES CASHIER COMPANY,

F. M. LeMonn,

FML:E

Sales-Mgr."

which said letter had theretofore and on April 7, 1912, at Portland, Oregon, been written and executed by the said defendant, F. M. LeMonn, with the intent then and there in the said defendant, F. M. LeMonn, that the said letter contained in the said envelope and the said envelope should be sent, transmitted and delivered by and through the post office establishment of the United States to the said addressee at Billings, Montana; and which said letter was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the said defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell,

had theretofore, as hereinabove alleged, conspired, combined and agreed to devise and to execute;

14. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement, aforesaid, to effect the object thereof, the defendant, F. M. LeMonn, afterwards and on, towit, the 27th day of August, 1912, having theretofore received from the defendant B. F. Bonnewell, a telegram of which the following is a true and correct copy:

“NIGHT LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

Aug. 1912.

Gillette Wyo 26
U. S. Cashier Co
708 Lewis Bldg.
Portland, Ore

Can you furnish us with two hundred more shares to sell answer by wire kindly phone my wife to write me to Sheridan care Great Western Hotel as I leave here Thursday

B. F. Bonnell.”

did at Portland, and within the State and District of Oregon, execute and cause to be transmitted, sent and telegraphed over and by means of the wires of the West-

ern Union Telegraph Company, a certain telegram to the said B. F. Bonnewell, of which the following is a full, true and correct copy, towit:

“THE WESTERN UNION TELEGRAPH
COMPANY

August 27, 1912.

B. F. Bonnewell,
Gillette, Wyo.

Received wire. Allotting you two hundred more
shares for cash.

United States Cashier Co.

FML:E
CHG”

with the intent then and there in the said defendant, F. M. LeMonn, that the said telegram should be sent, transmitted and delivered to the said defendant, B. F. Bonnewell, by the said The Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute;

15. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement, aforesaid, to effect the object thereof, the defendant, Frank Menefee, afterwards and on, towit, the 19th day of May, 1912, having theretofore received from the defendant, B. F. Bonnewell, a telegram, of which the following is a true and correct copy:

“DAY LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

Deer Lodge, Mont. May 19th, 1912.

Frank Menefee,

708 Lewis Bldg.,

Portland, Ore.

Wire Paul Dunban Big Timber, Montana, Wm. Bonnewell, Sheridan, Wyoming and myself here all care Hotel closing telegram and about stock advancing send them night letters tonight if you can.

1105 AM

B. F. Bonnewell.”

did at Portland, and within the State and District of Oregon, execute and cause to be transmitted, sent and telegraphed over and by means of the wires of the Western Union Telegraph Company, a certain telegram to the said B. F. Bonnewell, of which the following is a full, true and correct copy, towit:

"NIGHT LETTER
THE WESTERN UNION TELEGRAPH
COMPANY

May 19, 1912.

To B. F. Bonnewell,
Deer Lodge, Montana.

Stock allotted practically exhausts amount at thirty and deals pending when closed will more than cover. Close all business and report as you go. May have to raise price to fifty at any time. Directors meeting Tuesday night.

United States Cashier Co."

Chg.

with the intent then and there in the said defendant, Frank Menefee, that the said telegram should be sent, transmitted and delivered to the said defendant, B. F. Bonnewell, by the said The Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute:

16. And the Grand Jurors, aforesaid, upon their oaths and affirmations, aforesaid, do further present, allege, find and charge:

That in pursuance and furtherance of said unlawful conspiracy, combination, confederation and agreement, aforesaid, and to effect the object thereof, the defendant, Frank Menefee, afterwards and on, to-wit, the 5th day of June, 1912, did, at Portland, Oregon, execute and cause to be transmitted, sent and telegraphed over and by means of the wires of the Western Union Telegraph Company, a certain telegram to Mr. Edward E. Amsden, at Bender Hotel, Houston, Texas, of which the following is a full, true and correct copy, to-wit:

“DAY LETTER

THE WESTERN UNION TELEGRAPH
COMPANY.

Portland, Ore., June 5, 1912.

Edward E. Amsden,

Bender Hotel,

Houston, Texas.

Patents and applications filed fully protect Cashier Adding machine computing machine little change maker and currency paying machine. After extensive search our attorneys assure us amply protected in monopoly of devices. No suits whatever pending against Company. Assets Bills and accounts receivable and cash on hand for stock sold two hundred ninety five thousand. Real estate including factory site and building one hundred twenty seven thousand. Machinery tools equipment and development commercial machines one hundred twenty thousand. Paid for patents stock and cash approximately four hundred thousand. Liabilities unpaid on patent contracts not yet due twenty five thou-

sand. Bills payable and endorsement on paper sold seventeen thousand. Total assets Nine hundred forty two thousand. Total liabilities forty-two thousand.

Frank Menefee."

Charge

U.S.C.Co.

FM:HG

with the intent then and there in the said defendant, Frank Menefee, that the said telegram should be sent, transmitted and delivered to the said Edward E. Amsden, by the said The Western Union Telegraph Company; said telegram was then and there of and concerning the aforesaid scheme and artifice to defraud, which said scheme and artifice to defraud, the defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, E. O. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell, had theretofore as hereinabove alleged, conspired, combined, confederated and agreed to devise and to execute;

Contrary to the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 27th day of February, 1915.

A TRUE BILL

JOHN DRISCOLL,

Foreman of the United States Grand Jury.

CLARENCE L. REAMES,

United States Attorney.

The following witnesses were examined under oath before the Grand Jury:

W. S. Overlin, F. A. Bullington, Fred V. Conley, Nelson White, J. F. Ploffer, N. C. Oviatt, C. J. W. Hayes, Murtle Meadows, George W. Moyer, Harry Wainwright, John Marshall, C. F. L. Smith, A. A. Milliken, J. W. Zufall, Harry Caruthers, R. O. Holmes, John Straub, T. W. Harris, L. H. Robinson, C. K. Clarke, E. W. Draper, Jonas Hansen, W. B. Morse, E. D. Paine, R. L. Anderson, E. A. Mulkey, C. A. McMahon, R. L. Robinson, E. O. Tobey, S. M. Sim, J. W. Brett, J. S. Swenson, H. S. House, W. R. Litzenberg;

The following named witnesses appeared at their own request and testified under oath before said Grand Jury:

S. M. Mears, F. H. Gloyd, J. F. Robb, Frank Menefee (one of the defendants herein) and Thomas Bilyeu (one of the defendants herein).

Endorsed: A True Bill, John Driscoll, Foreman Grand Jury.

Filed February 27, 1915. G. H. Marsh, Clerk.

And afterwards, to wit, on Saturday, the 27th day of February, 1915, the same being the 102d judicial day of regular November, 1914, term of said Court; present: the Honorable Robert S. Bean, United

States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER TO FILE INDICTMENT.

Now on this day come into court the Grand Jury and through its foreman presents to the court an indictment, charging the above named defendants and each of them with the violation of Section 37 of the Federal Penal Code, endorsed "A True Bill," which indictment is received by the court and ordered to be filed and placed upon the general files of this court. Whereupon, it is ordered that separate bench warrants issue for the arrest of each of the defendants above named, and that the bail of each of said defendants be and the same is hereby fixed at \$2500.

And afterwards, to wit, on Wednesday, the 10th day of March, 1915, the same being the 9th judicial day of the regular March, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF ARRAIGNMENT AND PLEA OF B. F. BONNEWELL, H. M. TODD, JOSEPH HUNTER, AND P. E. MURAINÉ.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants B. F. Bonnewell, H. M. Todd, Joseph Hunter, and P. E. Muraine, each in his own proper person and

by Mr. Martin L. Pipes of counsel, and being duly arraigned upon the indictment herein, each of said defendants for himself, for plea to said indictment, says he is not guilty.

And afterwards, to wit, on Wednesday, the 5th day of May, 1915, the same being the 58th judicial day of the regular March, 1915, term of said court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF ARRAIGNMENT AND PLEA OF
FRANK MENEFEE, THOMAS BILYEU
AND OSCAR A. CAMPBELL.

Now at this day comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants Frank Menefee, Thomas Bilyeu, and Oscar A. Campbell, each in his own proper person and by Mr. Martin L. Pipes and Mr. W. M. Cake, of counsel, whereupon, said defendants being duly arraigned upon the indictment herein for plea thereto, each for himself, says he is not guilty.

And afterwards, to wit, on Tuesday, the 6th day of July, 1915, the same being the 2nd judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF EMPANELLING JURY AND
TRIAL.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants Frank Menefee and Thomas Bilyeu, each in his own proper person and by Mr. Martin L. Pipes and Mr. William M. Cake, of counsel; and the defendant Frank LeMonn in his own proper person and by Mr. A. P. Dobson, of counsel; and the defendant O. E. Gernert in his own proper person and by Mr. Dan J. Malarkey, of counsel; and the defendants B. F. Bonnewell and H. M. Todd, each in his own proper person and by Mr. J. J. Fitzgerald, of counsel; and the defendant Oscar A. Campbell in his own proper person and by Mr. Larkin Bilyeu, of counsel. Whereupon, said defendant O. E. Gernert objects to the order heretofore made severing the defendant P. E. Muraine in this cause, and the defendants O. E. Gernert, B. F. Bonnewell, H. M. Todd, and F. M. LeMonn, severally move the court for a separate trial, and the court having heard the arguments of counsel, it is ordered that each of said motions be and the same are hereby denied, and thereupon this being the time set for the trial of this cause, the court proceeds to the selecting of a jury to try the issues joined, and the hour of adjournment having arrived, the further trial of this cause is continued until tomorrow, Wednesday, July 7, 1915, at 10 o'clock A. M.

And afterwards, to wit, on Wednesday, the 7th day of July, 1915, the same being the 3rd judicial day of

the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF EMPANELLING JURY AND TRIAL.

Now, at this day, comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants, Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, appearing each in his own person and by his counsel as of yesterday, and the trial of this cause is resumed, and thereupon come the following jurors to try the issues joined, viz., Geo. T. Prather, David N. Lash, Frank Dayton, Hugh Carroll, H. C. Bressler, W. D. Allard, J. V. Zan, Wm. Fleming, G. L. Kelty, Harry M. Francis, J. D. Kelly and George McGraw, twelve good and lawful men of the district who being accepted by both parties are duly empaneled and sworn. And the hour of adjournment having arrived, the further trial of this cause is continued until tomorrow, Thursday, July 8, 1915, at 10 o'clock A. M.

And afterwards, to wit, on Wednesday, the 28th day of July, 1915, the same being the 21st judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND ENTRY OF AP-
PEARANCE OF J. L. ATKINS AS ATTOR-
NEY FOR THOMAS BILYEU.

Now, at this day, comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, appearing each in his own proper person and by his counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of this cause is resumed; whereupon on motion of Mr. Martin L. Pipes, of counsel for the defendant, Thomas Bilyeu, it is ordered that the appearance of Mr. J. L. Atkins be and the same is hereby entered as of counsel for the said defendant Thomas Bilyeu, and the jury having heard the evidence adduced and the hour of adjournment having arrived, the further trial of this cause is continued until tomorrow, Thursday, June 29, 1915.

And afterwards, to wit, on Friday, the 13th day of August, 1915, the same being the 37th judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND HEARING ON MOTIONS FOR DIRECTED VERDICTS.

Now at this day comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, appearing each in his own proper person and by his counsel as of yesterday, and the jury empaneled herein being present and answering to their names, the trial of this cause is resumed; whereupon both of the parties having rested, said defendants Frank Menefee, Thomas Bilyeu, F. M. LeMonn, and O. A. Campbell orally move the court to direct the jury to return a verdict of not guilty as to them, and the defendants, B. F. Bonnewell, H. M. Todd, and O. E. Gernert having heretofore severally filed motions for the court to direct the jury to return a verdict of not guilty as to them, the said motions of said defendants B. F. Bonnewell, H. M. Todd, O. E. Gernert, and Thomas Bilyeu come on to be heard by the court; whereupon it is ordered that the jury empaneled herein be excused from attendance upon this court during the said argument and until Monday, August 16, 1915, at two o'clock P. M., and the court having heard the arguments of counsel for respective parties and the hour for adjournment having arrived, the further trial of this cause is continued until tomorrow, Saturday, August 14, 1915, at 10 o'clock A. M.

And afterwards, to wit, on Monday, the 16th day of August, 1915, the same being the 37th judicial day of the regular July, 1915, term of said Court; pres-

ent: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND ORDER ON MOTIONS FOR DIRECTED VERDICTS.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, appearing each in his own proper counsel and by his counsel as of Saturday, and the jury empaneled herein being present answer to their names. This cause having been submitted to the court upon the several motions of the defendants B. F. Bonnewell, H. M. Todd, O. E. Gernert, and Thomas Bilyeu for a directed verdict of not guilty in favor of said defendants, and the court having duly considered said motions, it is ordered that said motions be and the same are hereby denied as to the said defendants B. F. Bonnewell, H. M. Todd, O. E. Gernert, and that said motion be allowed as to the said defendant Thomas Bilyeu; whereupon said jury having heard the arguments of counsel and the hour of adjournment having arrived, the further trial of this cause is continued until Tuesday, August 17, 1915, at 10 o'clock A. M.

And afterwards, to wit on Friday, the 20th day of August, 1915, the same being the 41st judicial day of the regular July, 1915, term of said Court; pres-

ent: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND SUBMISSION OF CAUSE TO JURY.

Now at this day comes the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J. Beckman, Assistant United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell, appearing each in his own proper person and by his counsel as of yesterday, and the jury empaneled herein being present and answering to their names the trial of this cause is resumed; and the said jury having heard the evidence adduced and the arguments of counsel and the charge of the court retire in charge of proper sworn officers to consider of their verdict.

And afterwards, to wit, on Saturday, the 21st day of August, 1915, the same being the 42d judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF TRIAL AND RECORD OF VERDICT.

Now, at this day, come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and Mr. John J.

Beckman, Assistant United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell appearing each in his own proper person and by his counsel as of yesterday; whereupon the jury empaneled herein come into court and return to the court their verdict in words and figures as follows, to-wit, "We, the jury in the above entitled action, find the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell guilty as charged in the indictment, and the defendant Thomas Bilyeu not guilty. We, the jury, also recommend the defendant, Oscar A. Campbell, to the mercy of the court. Wm. Fleming. Foreman." which verdict is received by the court and ordered to be filed; whereupon on motion of said plaintiff it is ordered that each of said defendants except the defendant F. M. LeMonn be allowed to go upon the bail heretofore given by them respectively, but that the bail of the defendant F. M. LeMonn be and the same is hereby increased to the sum of \$5000.00 and that in default of said bail he stand committed to the county jail of Multnomah county, Oregon, and on motion of said defendants, it is ordered that they be and each of them is hereby allowed ten days from this date within which to file a motion for new trial herein.

And afterwards, to wit, on the 21st day of August, 1915, there was duly filed in said Court a Verdict, in words and figures as follows, to wit:

VERDICT.

*In the District Court of the United States for the
District of Oregon.*

United States of America

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu,
O. E. Gernert, B. F. Bonnewell, H. M.
Todd, Joseph Hunter, O. L. Hopson, P. E.
Murane, and Oscar A. Campbell.

Defendants.

We, the jury in the above entitled action, find the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell guilty as charged in the indictment, and the defendant Thomas Bilyeu not guilty.

We, the jury, also recommend the defendant, Oscar A. Campbell, to the mercy of the Court.

Wm. Fleming, Foreman.

Filed, August 21, 1915,

G. H. Marsh, Clerk.

And afterwards, to wit, on Monday, the 25th day of October, 1915, the same being the 97th judicial day of the regular July, 1915, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

RECORD OF SENTENCE OF FRANK MENEFEE, F. M. LeMONN, O. E. GERNERT, B. F. BONNEWELL, H. M. TODD, AND OSCAR A. CAMPBELL. ORDER ADMITTING TO BAIL. AND ORDER ALLOWING TIME TO SUBMIT BILL OF EXCEPTIONS, AND STAYING EXECUTION.

Now at this day come the plaintiff by Mr. Clarence L. Reames, United States Attorney, and the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, and O. A. Campbell, each appearing in his own proper person and by Mr. Martin L. Pipes, Mr. A. P. Dobson, Mr. John F. Logan, Mr. Robert F. Maguire, and Mr. Larkin Bilyeu, of counsel; whereupon said plaintiff moves the court for judgment upon the verdict of the jury heretofore filed herein; whereupon the court having heard the statements made on behalf of said defendants:

It is considered that said defendant Frank Menefee and the said defendant F. M. LeMonn each be imprisoned in the United States penitentiary at McNeils Island, Washington, for the term of one year and ten days, and that said defendants O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell each be imprisoned in the county jail of Multnomah County, Oregon, for the term of four months and that each of said defendants stand committed until this sentence be performed or until they be discharged according to law. Whereupon on motion of said defendants it is ORDERED that they be and they are hereby allowed until

December 1, 1915, within which to submit a bill of exceptions herein, and on motion of said plaintiff it is **ORDERED** that the bail of the said defendants Frank Menefee and F. M. LeMonn be and the same is hereby fixed at the sum of \$5000.00 and that the bail of the said defendants O. E. Gernert, B. F. Bonnewell, H. M. Todd, and Oscar A. Campbell be and the same is hereby fixed at the sum of \$2500.00; and it is further **ORDERED** that execution of the sentence be stayed as to said defendants upon the filing of bonds in the amounts herein fixed, until December 1, 1915.

And it appearing to the court that the said F. M. LeMonn does not desire to give further bail, it is **ORDERED** that commitment forthwith issue in accordance with the judgment of this court as to the said defendant.

And afterwards, to wit, on the 11th day of February, 1916, there was duly filed in said Court and cause, by Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, a Bill of Exceptions, in words and figures as follows, to wit:

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu,
O. E. Genert, B. F. Bonnewell, H. M.
Todd, Joseph Hunter, O. L. Hopson, P. E.
Muraine, and Oscar A. Campbell,

Defendants.

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that the above entitled cause came on for trial in the said The United States District Court for the District and State of Oregon, the plaintiff appearing by the United States District Attorney, Clarence L. Reames; the defendant Frank Menefee appearing by Martin L. Pipes and W. M. Cake; the defendant F. M. LeMonn appearing by A. P. Dobson; the defendant Thomas Bilyeu appearing by Martin L. Pipes and W. M. Cake; the defendant O. E. Gernert appearing first by Dan J. Malarkey, and subsequently, Mr. Malarkey having withdrawn from the case, by Robert F. Maguire; the defendants B. F. Bonnewell and H. M. Todd appearing by J. J. Fitzgerald, and the defendant Oscar A. Campbell appearing by Lark Bilyeu, the said defendants Joseph Hunter, O. L. Hopson and P. E. Muraine not being on trial, and the following proceedings were had:

The plaintiff, to sustain the issues on its part, offered evidence, which was received, tending to support the allegations of the indictment, and to prove that the United States Cashier Company, at all the times specified in the indictment, was a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in the City of Portland, County of Multnomah, and within the State and District of Oregon; that at all the times between the 1st day of September, 1910, and the 31st day of January, 1914, the defendant Frank Menefee was the duly elected, qualified and acting director of said corporation, and that at and during all of the times be-

tween the 1st day of September, 1910, and the 31st day of January, 1914, the said Frank Menefee was the duly elected, qualified and acting president of said corporation, and that at and during all of the times between the 28th day of September, 1910, and the 31st day of January, 1914, the said Frank Menefee was the duly elected, qualified and acting General Manager of said corporation; that at all the times and dates between the 1st day of September, 1910, and the 1st day of November, 1912, the defendant F. M. LeMonn was the duly elected, qualified and acting Sales Manager of said corporation; that at and during all of the times and dates between the 1st day of January, 1911, and the 1st day of April, 1912, the defendant O. E. Gernert was an agent and salesman of said corporation, and the duly appointed, qualified and acting Assistant Sales Manager of said corporation; that at and during all of the times and dates between the 15th day of April, 1911, and the 31st day of January, 1914, the defendant B. F. Bonnewell was the duly elected, qualified and acting Fiscal Agent for the said corporation, and an agent and salesman for said corporation, engaged in selling the stock thereof; that at and during all of the times and dates between the 15th day of April, 1911, and the 1st day of September, 1913, the defendant H. M. Todd was a duly appointed, qualified and acting Sales Agent for said corporation, engaged in selling the stock of the said corporation; that at and during all the times and dates between the 26th day of May, 1911, and the 31st day of January, 1914, the defendant Joseph Hunter was the duly appointed, qualified and acting Sales Agent for said corporation.

engaged in selling the stock thereof; that at and during all the times and dates between the 23rd day of November, 1910, and the 1st day of July, 1913, the defendant O. L. Hopson was the duly appointed, qualified and acting Sales Agent of said corporation, engaged in selling the stock thereof; that at and during all the times and dates between the 6th day of March, 1911, and the 31st day of January, 1914, the defendant P. E. Muraine was the duly appointed, qualified and acting Sales Agent for said corporation; that at and during all of the times and dates between the 12th day of June, 1911, and the 31st day of January, 1914, the defendant Oscar A. Campbell was the duly elected, qualified and acting director of said corporation, and that at and during all of the times between the 30th day of January, 1912, and the 31st day of January, 1914, the defendant Oscar A. Campbell was the duly elected, qualified and acting Vice-President of said corporation; that at and during all of the times between the 1st day of January, 1911, and the 1st day of July, 1913, said defendant Campbell was a sales agent for said corporation, engaged in selling the stock thereof; that at and during all of the times and dates between the 9th day of June, 1913, and the 31st day of January, 1914, the defendant Thomas Bilyeu was the duly elected, qualified and acting Director of said corporation.

That at and during all of the times and dates between the 1st day of September, 1910, and the 31st day of January, 1914, the capital stock of the said corporation amounted to the sum of \$1,200,000.00, divided and segregated by the articles of incorporation of said corpora-

tion into 120,000 shares of the par value, as fixed and stated in said articles of incorporation, of \$10.00 for each and every of said shares.

That hereafter wherever the term "THE DEFENDANTS" is used in this statement of the evidence, it means, includes and embraces the defendants Frank Menefee, F. M. LeMonn, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine and Oscar A. Campbell.

And the plaintiff, to sustain the issues on its part, offered evidence which was received, which evidence tended to prove that at the city of Portland, within Multnomah County, Oregon, and on or about September 1, 1910, THE DEFENDANTS did then and there unlawfully, wilfully and feloniously conspire, confederate and agree together to commit the acts made offenses and crimes by the laws of the United States to prevent the use of the United States mails to promote fraud, to wit, section two hundred fifteen of the criminal code of the United States; that is to say, THE DEFENDANTS did then and there unlawfully, wilfully and feloniously conspire, combine, confederate and agree together, and with divers other persons, to devise and execute a scheme and artifice to defraud to be effected by means of the post office establishment of the United States, and to obtain money and property by means of false and fraudulent representations, pretenses and promises from the fifty-five persons named in the indictment, and therein termed as INVESTORS, and from

divers other persons, and the public generally, by inducing, inciting and procuring the said INVESTORS and divers and other persons and the public generally, to open communication with THE DEFENDANTS and with the said United States Cashier Company, a corporation, and by inducing, inciting and procuring the said INVESTORS and divers other persons, and the public generally, to purchased from THE DEFENDANTS and from said corporation, namely, United States Cashier Company, the shares of stock of said corporation and to pay over, deliver and to transfer to THE DEFENDANTS and to the said corporation, namely, United States Cashier Company, in exchange and payment for said shares of stock the money and property of the said INVESTORS and of divers other persons, the payment of said sums of money to THE DEFENDANTS and to the said corporation, namely, United States Cashier Company, and the transfer of said property to THE DEFENDANTS and to the said corporation to be induced, incited and procured by the false and fraudulent representations of THE DEFENDANTS to be made to the said INVESTORS and to divers other persons by THE DEFENDANTS.

That it was a part and portion of said unlawful, wilful and felonious conspiracy, so entered into by THE DEFENDANTS that said scheme and artifice to defraud the said INVESTORS and divers other persons, and the public generally, should be by THE DEFENDANTS carried out, carried on and effected by the further means, methods, manner and plans, that is to say, the DEFENDANTS would cause, induce, incite

and procure the said INVESTORS and many and divers other persons, and the public generally, to pay over and to deliver to and to transfer to THE DEFENDANTS, and to the said corporation in payment of and in exchange for the shares of stock of said corporation, United States Cashier Company, money and property of the value of more than the sum of one million dollars, which said payment of said money and which transfer of said property was to be by THE DEFENDANTS induced, incited, procured and obtained by the dishonest, fraudulent and false representations and promises hereinafter set forth, all to be made to the said INVESTORS by THE DEFENDANTS and to divers other persons and the public generally, and to swindle, cheat and defraud said INVESTORS and each, every and all thereof, and various and sundry other persons, and the public generally, out of all of the said sums of money and the said property that the said INVESTORS and various other persons, and the public generally, should pay over and deliver to THE DEFENDANTS or either thereof, or to the said corporation;

That for the purpose of inducing, inciting and procuring the said INVESTORS and various and divers other persons and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to THE DEFENDANTS and to the said corporation, money and property in exchange and payment therefor, THE DEFENDANTS would falsely and fraudulently and by means of printed advertisements to be by THE DEFENDANTS inserted in

newspapers, in pamphlets, in catalogues, in circulars and in letters, and to be written in letters, which said newspapers, pamphlets, catalogues, circulars, and letters were to be by THE DEFENDANTS transmitted and caused to be transmitted and sent by and through, and by means of the postoffice establishment of the United States, to the said INVESTORS and to divers other persons, and by words to be orally spoken by THE DEFENDANTS represent, pretend and promise that the said corporation, owned the patents to a certain "CHANGE COMPUTING MACHINE," a certain "BANK CASHIER MACHINE," a certain "LIGHTNING CHANGE MAKER," a certain "CURRENCY PAYING MACHINE," and a certain "NEW STYLE ADDING MACHINE," and that the said corporation was engaged in the business of manufacturing and selling said machines, and each, every and all thereof; that on account of the said alleged ownership of said patents and the said alleged manufacturing of said machines by said corporation, the said shares of stock of said corporation, were of great commercial value and that large dividends would be by said corporation declared and paid thereon to the said INVESTORS and to all other persons who should purchase the same from THE DEFENDANTS or from the said corporation; that said corporation would declare and pay to all of said INVESTORS, and to divers other persons, and to all persons who should purchase the shares of stock from said corporation large and certain dividends upon said stock within six months from the date that any of said persons should purchase any

of said shares of stock from **THE DEFENDANTS**, or either thereof, or from said corporation; that the said corporation was the owner and in the possession of large bona fide orders for the purchase of said machines and that on account of said orders for the said machines the said corporation would make a large and certain profit; that the financial condition of the said corporation was excellent, and that the assets of said corporation far exceeded in value the total amount of the liabilities against and owed by said corporation; that a certain large amount of the capital stock of said corporation, which said stock would be offered for sale to the said **INVESTORS** and to divers other persons and the public generally, belonged to and was the property of the said corporation, and that the money derived from the sale thereof would be by said corporation invested and used in such a manner as to increase the assets of said corporation, and to make its shares of stock more valuable, and particularly for the purpose of purchasing and building factories in which to increase the manufacture of said machines; that inasmuch as the assets of said corporation exceeded and was greater than the liabilities of said corporation, **THE DEFENDANTS** were justified in raising and increasing the selling price of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each;

from a selling price of twenty dollars each to a selling price of thirty dollars each; and from a selling price of thirty dollars each to a selling price of fifty dollars each.

That in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, neither the said corporation, nor any of **THE DEFENDANTS** owned the patents to said certain "CHANGE COMPUTING MACHINE," or said certain "LIGHTNING CHANGE MAKER," or said certain "CURRENCY PAYING MACHINE," or said certain "NEW STYLE ADDING MACHINE," or either thereof; and

That in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof, at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the said corporation was not engaged in either the business of manufacturing or selling said machines, or any thereof, but on the contrary its business was to sell and dispose of the said shares of stock; and

That, in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, the said shares of stock and each, every and all thereof, were of very little value and of practically no value whatsoever, and said shares of stock and each, every and all thereof were practically worthless; and

That, in truth and in fact and as THE DEFENDANTS and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, no dividends whatsoever would ever be by said corporation, either declared or paid to the said INVESTORS, or to any other person who should purchase the said shares of stock by either the said corporation, or by any of THE DEFENDANTS; and

That in truth and in fact and as THE DEFENDANTS, and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment then and there well knew, none of the said INVESTORS, or any other person who should purchase said shares of stock, would ever receive, either from said corporation or from THE DEFENDANTS any dividend whatsoever; and

That in truth and in fact and as THE DEFENDANTS and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the said corporation was neither the owner nor in the possession of the said alleged bona fide orders for the purchase of said machines; and

That in truth and in fact and as THE DEFENDANTS and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the financial condition of said corporation was not excellent, but on the contrary at and during all of the times and

dates mentioned, specified and stated in the indictment, and as **THE DEFENDANTS** then and there well knew, the said corporation was absolutely insolvent; and

That in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, the value of the assets of said corporation amounted to a sum much less than the total amount of the liabilities against and owed by said corporation; and

That in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, a very large amount of the shares of stock of said corporation, which **THE DEFENDANTS** were to represent as being the property of the said corporation, consisted of shares of stock owned by **THE DEFENDANTS** and all of the sums of money and all of the property received on account of the sale thereof would be appropriated by **THE DEFENDANTS** and none of the same or any part thereof would be paid into the treasury of the said corporation, to be used by it, either for increasing the assets of said corporation, or otherwise; and

That in truth and in fact, and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, none of **THE DEFENDANTS** or any thereof, were at any time on account of the financial condition of said corpor-

ation justified in either raising or increasing the selling price of said shares of stock or any thereof; and

That in truth and in fact and as **THE DEFENDANTS** and each, every and all thereof at and during and between all the times and dates mentioned, specified and stated in the indictment, then and there well knew, each and every person who should purchase any of said shares of stock from **THE DEFENDANTS** or from said corporation, would suffer and sustain a loss on account of said transaction of all sums of money which any of said persons should pay over or deliver to **THE DEFENDANTS** or to said corporation, in exchange or payment for said shares of stock.

That it was a further part and portion of said unlawful, wilful and felonious conspiracy so entered into by **THE DEFENDANTS** that said scheme and artifice to defraud the said **INVESTORS** and divers other persons, and the public generally, should be by **THE DEFENDANTS** carried out, carried on and effected by the further means, methods, manner and plan, that is to say, that for the purpose of inducing, inciting and procuring the said **INVESTORS** and divers other persons, and the public generally, to purchase said shares of stock from said corporation and from **THE DEFENDANTS** and to pay over and deliver to **THE DEFENDANTS**, and to the said corporation, money and property in exchange and in payment therefor, **THE DEFENDANTS** would from time to time during the existence of said conspiracy, fraudulently and dishonestly publish

and cause to be published, false and untrue written and printed statements of the assets of said corporation, and false and untrue written and printed statements of the liabilities owed by said corporation, and false and untrue written and printed statements of the financial condition of said corporation. That in said false and untrue statements of the assets of said corporation, and in each, every and all thereof, the assets of said corporation would be by **THE DEFENDANTS** stated to be sums greatly in excess of the true value of all of the assets of said corporation; that in said false and untrue statements of the liabilities owed by said corporation, and in said false and untrue statements of the financial condition of said corporation and in each, every and all thereof, there would be by **THE DEFENDANTS** omitted therefrom liabilities owed by said corporation amounting to more than the sum of one half million dollars;

That it was a further part and portion of said wilful, unlawful and felonious conspiracy so entered into by **THE DEFENDANTS** that said scheme and artifice to defraud the said **INVESTORS** and divers other persons, and the public generally, should be carried out, carried on and effected by **THE DEFENDANTS** selling said shares of stock to the said **INVESTORS** and to divers other persons in the following states, namely, Oregon, Washington, California, Idaho, Montana, Wyoming, Utah, Texas, Iowa, North Dakota, Michigan, Illinois, Colorado, New York, and many and divers other states; that **THE DEFENDANTS** would so manage and control the business affairs of said corporation, to the end that more than twenty-five per cent of all

of the sums of money which should be by the said INVESTORS and by divers other persons and by the public generally, paid over, delivered and transferred to said corporation, and to THE DEFENDANTS in exchange and payment for said shares of stock, would be appropriated by THE DEFENDANTS to their own use and gain; that for the purpose of inducing, inciting and procuring the said INVESTORS and various and divers other persons and the public generally, to purchase said shares of stock of said corporation and to pay over and to deliver to THE DEFENDANTS and to the said corporation, money and property in exchange and payment therefor, THE DEFENDANTS would increase the selling price of said shares of stock from the said par value of ten dollars each to a selling price of eleven dollars each; from a selling price of eleven dollars each to a selling price of twelve dollars and fifty cents each; from a selling price of twelve dollars and fifty cents each to a selling price of fifteen dollars each; from a selling price of fifteen dollars each to a selling price of twenty dollars each; from a selling price of twenty dollars each to a selling price of thirty dollars each; and from a selling price of thirty dollars each to a selling price of fifty dollars each; by placing and causing to be placed in the post office of the United States, at Portland, in Multnomah County, Oregon, and causing to be delivered by the post office establishment of the United States, the said newspapers, pamphlets, catalogues, circulars and letters, and other letters to be written by THE DEFENDANTS which said letters would request the said INVESTORS and divers other

persons to remit and to pay to **THE DEFENDANTS** and to said corporation money in payment and exchange for said shares of stock, all of said newspapers, pamphlets, catalogues, circulars, and letters, to be sent and delivered by the postoffice establishment of the United States to the persons to whom addressed in pursuance of said conspiracy;

That the said conspiracy, combination and agreement aforesaid should and would continue from the said 1st day of September, 1910, until and including the 1st day of January, 1915; that said conspiracy was to be a continuing conspiracy, and that it was to continue at all times between the 1st day of September, 1910, until and including the 1st day of January, 1915, and that at and during all of the times and dates **THE DEFENDANTS** would continue to be parties to said conspiracy and would continue to commit the said acts, and crimes hereinbefore set forth in detail.

That the said wilful, unlawful and felonious conspiracy, combination and agreement, aforesaid, so entered into by **THE DEFENDANTS** on or about the 1st day of September, 1910, continued from the date of said conspiracy until and including the 1st day of January, 1915; that at and during all of the times and dates between the said 1st day of September, 1910, and the 1st day of January, 1915, said wilful, unlawful and felonious conspiracy, combination and agreement was continually in existence and in operation, and at and during all of said times **THE DEFENDANTS** continued to wilfully, unlawfully and feloniously conspire, combine, con-

federate and agree together to commit the said crime hereinbefore set forth in detail.

And the plaintiff offered evidence tending to prove that in pursuance of the said conspiracy and to effect the object thereof, the defendants B. F. Bonnewell, Frank Menefee and F. M. LeMonn committed each, every and all of the overt acts that are mentioned, specified and stated in the indictment in the manner and at the several times and places respectively alleged and stated in said indictment.

The plaintiff offered evidence which was received and which tended to prove that during all of the times stated in the indictment the Portland Oregonian, The Oregon Daily Journal, and The Evening Telegram were newspapers published and issued daily and regularly at Portland, in Multnomah County, Oregon; that during said times said newspapers and each thereof had a circulation of more than 25,000 and that more than 25,000 copies of said papers and each thereof were, during all of the times stated in the indictment, daily and regularly transmitted through the agency of the post-office department at Portland, Oregon, to more than 25,000 subscribers located in all parts of the United States; that the defendant Frank Menefee, and the defendant F. M. LeMonn, inserted in said newspapers, and each, every and all thereof, the following hereinafter described advertisements of the United States Cashier Company, and copies of said papers from the files of said newspaper offices were introduced in evidence by the plaintiff. Each of said newspapers containing said advertisements displayed the names of all of the de-

fendants and the defendant Thomas Bilyeu, as officers of said corporation, namely, the United States Cashier Company. The advertisements referred to are as follows:

Government's exhibit No. 17 was page 9 of the issue of the Oregon Daily Journal of date October 30, 1910. This was a display advertisement containing two cuts of machines, model No. 1 being the Bilyeu cashier, and model No. 2 being the Potter cashier. The advertisement contained the statement that the "value of the patent rights for the Bilyeu Automatic cashier for the United States alone is almost priceless," and an invitation was offered the public to purchase the stock.

Government's exhibit No. 18 is page 7 of the Oregon Daily Journal of date November 20, 1910, displaying a similar advertisement as shown in Government's exhibit No. 17.

Government's exhibit No. 19 is page 3 of the issue of the Oregon Daily Journal of date November 27, 1910, containing substantially the same advertisement as Government's exhibit No. 17, with the exception that the announcement is made that the stock "will positively advance ten per cent on the 6th day of December, 1910."

Government's exhibit No. 20 is page 18 of the issue of the Oregon Daily Journal of date December 1, 1910, containing an advertisement substantially the same as the advertisement shown in Government's exhibit No. 19.

Government's exhibit No. 21 is page 10 of the issue of the Oregon Daily Journal of date December 5, 1910,

which is substantially the same advertisement as Government's exhibit No. 17, with the exception that the statement is made therein that the company will pay one hundred per cent.

Government's exhibit No. 23 is page 13 of the issue of the Oregon Daily Journal of date June 23, 1911, showing an advertisement substantially the same as Government's exhibit No. 17, with the exception that the statement is made that the company will pay one hundred per cent annually.

Government's exhibit No. 24 is page 12 of the issue of the Oregon Daily Journal of date June 27, 1911, showing an advertisement substantially the same as Government's exhibit No. 17.

Government's exhibit No. 25 is page 15 of the issue of the Oregon Daily Journal of date June 29, 1911, showing an advertisement substantially the same as Government's exhibit No. 17.

Government's exhibit No. 26 is page 12 of the issue of the Oregon Daily Journal of date June 30, 1911, containing an advertisement substantially the same as shown in Government's exhibit No. 17.

Government's exhibit No. 27 is page 12 of the issue of the Oregon Daily Journal of date October 17, 1911, which advertisement is substantially the same as Government's exhibit No. 17, and in addition thereto the following statements are contained therein:

“AT LAST”**“A CASH REGISTER, ADDING MACHINE, and CHANGE COMPUTER
ALL IN ONE.”**

“Don’t fail to see it in actual operation.

“Demonstrations at 266 Stark Street—Open evenings.

Followed by general description of computing machine and its functions.

References to millions made by Cash Register and millions made by Adding Machine people.

Yet Change Computing Machine of United States Cashier Company greater than either of these.

Giving figures of estimated profits.

Giving partial list of officers, advisory board, and directors.

Urging immediate investment because stock positively advanced to \$20 in a few days, and this is the last opportunity to buy at \$15 per share.

“The change-computing machine alone is sufficient to return the original investors tremendous profits.

“In addition to change-computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz,—the Bank Cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine. Any one of the above machines insures big returns, and future profit of the United States Cashier

Company, owning and controlling as it does patents of five such marvelous machines, is impossible of calculation."

Government's exhibit No. 31 is page 15 of the issue of the Evening Telegram of date November 17, 1910.

Government's exhibit No. 32 is page 10 of the issue of the Evening Telegram of date November 19, 1910.

Government's exhibit No. 33 is page 5 of the issue of the Evening Telegram of date November 23, 1910.

Government's exhibit No. 36 is page 5 of the issue of the Evening Telegram of date December 5, 1910.

Government's exhibit No. 37 is page 5 of the issue of the Evening Telegram of date March 11, 1911.

Government's exhibit No. 38 is page 13 of the issue of the Evening Telegram of date June 21, 1911.

Government's exhibit No. 39 is page 9 of the issue of the Evening Telegram of date June 26, 1911.

Government's exhibit No. 40 is page 11 of the issue of the Evening Telegram of date June 28, 1911.

Government's exhibit No. 41 is page 11 of the issue of the Evening Telegram of date June 30, 1911.

Each, every and all of the advertisements in the Telegram were substantially the same as those in the Oregon Daily Journal.

Government's exhibit No. 42 is page 11 of the issue of the Evening Telegram of date October 11, 1911. This advertisement is substantially the same as Government's exhibit No. 17, and in addition thereto there appears therein the following statement:

**"METHODS OF HANDLING MONEY
WILL BE REVOLUTIONIZED!"**

**"EXTENSIVE PRODUCTION OF MAR-
VELOUS MECHANICAL BRAIN"**

**"PRODUCT OF UNITED STATES CASH-
IER COMPANY TO BEGIN IMME-
DIATELY."**

Two cuts of machines and automatic bank cash-
ier. Between the cuts, the following quotation:

"Much has been said and written of the wonderful machines which have been in process of perfection by the United States Cashier Company for the past twelve months. Operations have now reached the stage where the extensive production of these wonderful machines commences immediately and deliveries will be made in about 90 days. They promise to outrival the cash register, adding machine, and typewriter in usefulness. In fact, will revolutionize the present systems of handling money. This is a broad statement, but one that is amply borne out by the machines themselves.

"For instance, the change-computing machine makes exchange mechanically, quickly and accurately. Suppose you purchase \$4.25 worth of merchandise and tender \$10 in payment. All that is necessary is to depress the keys representing the amount purchased and the amount tendered, pull the lever, and the machine pays \$5.75, the exact change. The operation is completed quicker than any human calculator can ever hope to do it, besides

being absolutely correct. In addition a visible permanent record is made of both transactions, besides totaling each sale as made.

“It is safe to state that there never was a machine placed on the market for which there is such a great actual need.

“The change-computing machine alone is sufficient to return the original investors tremendous profits.

“In addition to the change-computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz,—the Bank Cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine. Any one of the above machines ensures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does patents of five such marvelous machines, is impossible of calculation.

“RECORD OF THE UNITED STATES CASHIER COMPANY UNPARALLELED.

In all respects the record of the United States Cashier Company stands unparalleled. The United States Cashier Company has been financed in less time than any other of the present day great successes. Since the company was first launched a little over a year ago, the leading bankers, business men, and capitalists of this city and the Pacific

Coast have subscribed for a sufficient amount of stock to assure its success. Today the assets of the United States Cashier Company (not including patents, which are conservatively valued at not less than \$500,000) are over \$400,000, including real estate, factory, equipment, machines, material, cash, and bills receivable.

“The only stock remaining unsold is 15,000 shares which are held in escrow by one of Portland’s leading banks for the payment of the original patent rights. The United States Cashier Company has the right to redeem this stock any time within twelve months.

“On or before November first, the United States Cashier Company stock will positively advance to \$20 per share. The last block of stock offered was eagerly purchased by keen business men at \$15 per share.

“Accordingly, instead of waiting to redeem this patent stock when it is due twelve months from now, the Board of Directors have decided to offer it now, while it lasts, subject to previous reservation, at \$15 per share. This will enable those who have recently made application for stock to be taken care of and will also afford a large manufacturing fund ample to meet any contingencies that might arise.”

Government’s exhibit No. 43 is page 13 of the issue of the Evening Telegram of date October 19, 1911, containing an advertisement substantially the same as shown

in Government's exhibit No. 17. In addition thereto the following statement is made:

"The change-computing machine alone is sufficient to return original investors tremendous profits.

"In addition to the change-computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz,—the bank cashier, also a lightning change-maker; a currency-paying machine, also a new style adding machine.

"Any one of the above machines insures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does five such marvelous machines, is impossible of calculation.

"Stock positively advanced to \$20 in a few days.

"Last opportunity to buy at \$15 per share.

"Remember: Only a few shares remain.

"Time to act is now; the first thing tomorrow morning.

"Call, phone, write, or wire.

United States Cashier Company

"Manufacturers of automatic, computing, change-making recording, coin-paying machines, and adding machines."

Government's exhibit No. 44 is page 10 of the issue of the Evening Telegram of date October 30, 1911, which contains an advertisement substantially the same

as shown in Government's exhibit No. 17, with the following addition:

"ONLY ONE DAY MORE

**"LAST OPPORTUNITY TO BUY UNITED
STATES CASHIER COMPANY STOCK
AT \$15.00"**

**"POSITIVELY ADVANCES TO \$20 NO-
VEMBER 1."**

Containing a description of the computing machines, automatic bank cashier, change-computing, currency-paying, lightning change maker, and adding machine, and the statement regarding the breaking of all records by the United States Cashier Company in its financing, and containing following quotation: underscored:

"The United States Cashier Company not only controls one of the above machines,—any one of which would return big profits, but owns and controls patents and rights to all of them."

**"REMEMBER: Only one day more at \$15.
Stock positively advanced to \$20 November 1.**

"Call, write or wire."

Government's exhibit No. 47 is page 9 of the issue of the Morning Oregonian of date March 11, 1911.

Government's exhibit No. 48 is page 15 of the issue of the Morning Oregonian of date June 22, 1911.

Government's exhibit No. 49 is page 5 of the issue of the Morning Oregonian of date June 27, 1911.

Government's exhibit No. 50 is page 9 of the issue of the Morning Oregonian of date June 29, 1911; said four last mentioned exhibits and each thereof contained an advertisement of the United States Cashier Company substantially the same as shown in Government's exhibit No. 17.

Government's exhibit No. 51 is page 11 of the issue of the Morning Oregonian of date October 8, 1911, which shows an advertisement substantially the same as Government's exhibit No. 17, with the following addition:

**"METHODS OF HANDLING MONEY
WILL BE REVOLUTIONIZED."**

"EXTENSIVE production of marvelous mechanical brain—the product of the United States Cashier Company—to begin in about 90 days."

**"RECORD OF UNITED STATES CASH-
IER COMPANY UNPARALLELED."**

"In all respects the record of the United States Cashier Company stands unparalleled. The United States Cashier Company has been financed in less time than any other of the present day great successes. Since the company was first launched a little over a year ago, the leading banks, business men, and capitalists of this city and the Pacific Coast have subscribed for a sufficient amount of stock to assure its success. In fact, staid banks which never before endorsed anything of this nature, lent their enthusiastic support in most strongly

worded testimonials IN WRITING. Today the assets of the United States Cashier Company (not including patents) are over \$400,000, including real estate, factory equipment, machinery, machines, material, cash, and bills receivable."

"ONLY 15,000 SHARES REMAIN.

"The only stock remaining unsold is about 15,000 shares which are held in escrow by one of Portland's leading banks for payment of the original patent rights.

"The United States Cashier Company has the right to redeem this stock any time within twelve months."

"Much has been said and written of the wonderful machines which have been in process of perfection by the United States Cashier Company for the past twelve months. Operations have now reached the stage where from present indications extensive production of this wonderful machine will commence in about 90 days. They promise to outrival the cash register, adding machine, and typewriter in usefulness. In fact, will revolutionize the present system of handling money. This is a broad statement, but one that is amply borne out by the machines themselves.

"The computing machine alone is sufficient to return original investors of the United States Cashier Company tremendous profits. \$100 invested in National Cash Register stock returned \$42,780.

“In addition to the computing machine, the United States Cashier Company has perfected and patented four equally wonderful and equally essential machines, viz,—bank cashier, which permits paying checks rapidly by bank cashiers, as well as keeping a record of each transaction; a machine that banks have needed and wanted for years. Also a lightning change maker for pay-as-you-enter cars, theatres, etc., a currency paying and computing machine which pays paper money, gold and silver, with equal facility and correctness. Also a new style adding machine, which is more flexible than any now on the market and has less parts. Bank clerks cannot make mistakes. Paying tellers are saved hours of time each week. Department stores will quicken their service; merchants will be able to stop losses now impossible. In short, the whole system of handling money will be revolutionized.

“Any one of the above machines insures big returns, and the future profits of the United States Cashier Company, owning and controlling as it does five such marvelous machines, is impossible of calculation. The patent rights are virtually priceless and the demand for such money-saving, labor-saving devices is unlimited.”

Government's exhibit No. 52 is page 6 of the issue of the *Oregonian* of date October 15, 1911, containing an advertisement in which the following statement appears:

“The change computing machine alone is sufficient to return original investors tremendous profits.

“In addition to the change computing machine, the United States Cashier Company owns and controls four other equally wonderful and equally essential machines, viz,—the bank cashier, also a lightning change maker; a currency-paying machine, also a new style adding machine. Any one of the above machines insures big returns, and the future profit of the United States Cashier Company, owning and controlling as it does, five such marvelous machines, is impossible of calculation.”

Government's exhibit No. 54 is page 12 of the issue of the Oregonian of date October 29, 1911, containing an advertisement substantially the same as Government's exhibit No. 44, with the following addition:

“The United States Cashier Company not only controls one of the above machines,—any one of which would insure big profits, but owns and controls patents and rights to all of them.”

Each of the exhibits containing said advertisements showed full page display advertisements.

To sustain the issues on its part the Government offered in evidence exhibits 1 to 57 inclusive; exhibits 59 to 70 inclusive; exhibits 74 to 85 inclusive; exhibits 92 to 108 inclusive; exhibits 110 to 220, inclusive; exhibits 222 to 442 inclusive; these exhibits were as follows:

These exhibits and each, every and all thereof were received in evidence and read to the jury, the Govern-

ment having offered testimony which tended to prove the genuineness of each document and the authorship of each letter and telegram, together with proof that each of the letters was transmitted through the mails at the direction of the writer.

GOVERNMENT'S EXHIBITS.

No. 1, certified copy articles of incorporation United States Cashier Company.

No. 2, minute book No. 1, United States Cashier Company.

No. 3, minute book No. II, United States Cashier Company.

No. 4, pages 8 to 13, inclusive, minute book No. 1, United States Cashier Company.

No. 5, page 108, minute book No. 1, United States Cashier Company.

No. 6, pages 108, 111, 112 and 113, minute book No. 1, United States Cashier Company.

No. 7, pages 37, 38 and 39, minute book No. II, United States Cashier Company.

No. 8, page 48, minute book No. II, United States Cashier Company.

No. 9, certified copy articles of incorporation American Cash Record Company.

No. 10, page 108, minute book No. 1, United States Cashier Company.

No. 11, page 40, minute book No. II, United States Cashier Company.

No. 12, contract United States Cashier Company with Bonnewell and Todd, dated May 6, 1911.

No. 13, contract United States Cashier Company with Joseph Hunter, dated May 26, 1911.

No. 14, contract United States Cashier Company with Hopson and White, dated January 1, 1911.

No. 15, Oregon Journal advertising contract.

No. 16, Oregon Journal advertising contract.

No. 17, advertisement in Oregon Daily Journal.

No. 18, advertisement in Oregon Daily Journal.

No. 19, advertisement in Oregon Daily Journal.

No. 20, advertisement in Oregon Daily Journal.

No. 21, advertisement in Oregon Daily Journal.

No. 22, advertisement in Oregon Daily Journal.

No. 23, advertisement in Oregon Daily Journal.

No. 24, advertisement in Oregon Daily Journal.

No. 25, advertisement in Oregon Daily Journal.

No. 26, advertisement in Oregon Daily Journal.

No. 27, advertisement in Oregon Daily Journal.

No. 28, advertisement in Oregon Daily Journal.

No. 29, advertisement in Oregon Daily Journal.

No. 30, advertisement in Oregon Daily Journal.

No. 31, advertisement in Evening Telegram.

No. 32, advertisement in Evening Telegram.

No. 33, advertisement in Evening Telegram.

No. 34, advertisement in Evening Telegram.

No. 35, advertisement in Evening Telegram.

No. 36, advertisement in Evening Telegram.

No. 37, advertisement in Evening Telegram.

No. 38, advertisement in Evening Telegram.

No. 39, advertisement in Evening Telegram.

No. 40, advertisement in Evening Telegram.

No. 41, advertisement in Evening Telegram.

No. 42, advertisement in Evening Telegram.

No. 43, advertisement in Evening Telegram.

No. 44, advertisement in Evening Telegram.

No. 45, advertisement in Evening Telegram.

No. 46, Morning Oregonian advertising contract.

No. 47, advertisement in Morning Oregonian.

No. 48, advertisement in Morning Oregonian.

No. 49, advertisement in Morning Oregonian.

No. 50, advertisement in Morning Oregonian.

No. 51, advertisement in Morning Oregonian.

No. 52, advertisement in Morning Oregonian.

No. 53, advertisement in Morning Oregonian.

No. 54, advertisement in Morning Oregonian.

No. 55, advertisement in Morning Oregonian.

No. 56, copy letter LeMonn to Hunter and White and other salesmen, dated October 11, 1911.

No. 57, copy of letter LeMonn to Westerfield, October 11, 1911.

No. 59, copy letter LeMonn to Malthouse, February 9, 1912.

No. 60, copy letter LeMonn to Malthouse, February 21, 1912.

No. 61, copy letter LeMonn to White, October 3, 1911.

No. 62, copy letter LeMonn to Amsden Bros., August 14, 1911.

No. 63, copy letter LeMonn to Stevers, March 7, 1912.

No. 64, copy letter LeMonn to Salesmen, June 21, 1911.

No. 65, copy letter LeMonn to Griffiths, March 1, 1912.

No. 66, copy letter Menefee to Gernert, May 16, 1912.

No. 67, Sallaberry's first subscription blank.

No. 68, Sallaberry's check for \$3,000.

No. 69, Sallaberry's check for \$200.

No. 70, Sallaberry's subscription blank for 40 shares.

No. 74, Hansen receipt for \$4,500.

No. 75, letter Hansen to company, June 18, 1913.

No. 76, letter Gloyd to Hansen Bros., reply to exhibit 75.

No. 77, letter Bonnewell to Hansen Bros., July 17, 1913.

No. 78, Hansen receipt for \$1250, June 24, 1913.

No. 79, Owen receipt for \$450, May 24, 1912.

No. 80, Owen note for \$400, May 24, 1912.

No. 81, copy letter Owen to company, July 17, 1913.

No. 82, letter Gloyd to Owen, reply to exhibit 81.

No. 83, letter Gloyd to Owen, July 9, 1913.

No. 84, letter Gloyd to Owen, November 21, 1913.

No. 85, letter Gloyd to Owen, December 11, 1913.

No. 92, Mulkey subscription form, 50 shares, October 28, 1913.

No. 93, Mulkey subscription form, 40 shares, October 28, 1913.

No. 94, Robinson receipt for \$1300, March 14, 1912.

No. 95, John M. Johnson, subscription form for 50 shares, July 11, 1911.

No. 96, John M. Johnson subscription form, 50 shares, July 24, 1911.

No. 97, John M. Johnson subscription form, 100 shares, July 11, 1911.

No. 98, Moulton check for \$125, July 10, 1911.

No. 99, Moulton subscription form 10 shares, July 3, 1911.

No. 100, Winnett note for \$1400, September 23, 1911.

No. 101, letter Bonnewell to Lueddecke, May 8, 1913.

No. 102, letter Bonnewell to Lueddecke, January 14, 1913.

No. 103, letter Bonnewell to Lueddecke, February 16, 1913.

No. 104, Lueddecke receipt for \$3,000, December 9, 1912.

No. 105, Lueddecke subscription form 150 shares, Dec. 9, 1912.

No. 106, letter Bonnewell to Garl, October 30, 1911.

No. 107, letter LeMonn to Garl, October 20, 1911.

No. 108, letter LeMonn to Garl, November 17, 1911.

No. 110, copy of R. L. Anderson subscription form for 50 shares, October 29, 1913.

No. 111, original R. L. Anderson subscription form for 50 shares, October 29, 1913.

No. 112, Anderson note for \$1500, October 29, 1913.

No. 113, Anderson note for \$1500, October 29, 1913.

No. 114, letter Bonnewell and Todd to Company, July 20, 1911.

No. 115, Bonnewell to Sallaberry; indictment count No. 1.

No. 116-a and 116-b, LeMonn to L. E. Robinson; indictment count 12.

No. 117, LeMonn to L. H. Robinson; indictment count 5.

No. 118, copy letter sales manager to Westerfield, Oct. 25, 1911.

No. 119, copy letter Bonnewell to company, May 5, 1912.

No. 120, copy letter LeMonn to Bonnewell, May 11, 1912.

No. 121, carbon telegram LeMonn to Col. C. M. Jennings, May 11, 1912.

No. 122, carbon letter LeMonn to Amsden, January 12, 1911.

No. 123, carbon letter LeMonn to Amsden, January 12, 1911.

No. 124, carbon letter LeMonn to salesmen, March 6, 1911.

No. 125, carbon LeMonn circular, May 29, 1911.

No. 126, carbon letter LeMonn to Lanning, June 16, 1911.

No. 127, carbon "Confidential" LeMonn to salesmen, June 17, 1911.

No. 128, carbon letter LeMonn to Hopson, June 19, 1911.

No. 129, 129-a, 129-b and 129-c, carbon telegram to salesmen, July 3, 1911.

No. 130, 130-a, carbon telegram July 3, 1911, and letter to Western Union Telegraph Company request-

ing transmission same to Thomas Dowdell, and R. E. Porter.

No. 131, carbon letter LeMonn to salesmen, July 18, 1911.

No. 132, 132-a and 132-b, Sewall to company.

No. 133, carbon letter LeMonn to Roles and agents July 25, 1911.

No. 134, carbon letter LeMonn to Roles, August 10, 1911.

No. 135, carbon letter LeMonn to Amsden Bros., Sept. 8, 1911.

No. 136, Sewall to company, September 9, 1911, and company's reply, September 11, and carbon telegram same date.

No. 137, carbon letter LeMonn to Roles, October 27, 1911.

No. 138, carbon letter LeMonn to Roles, October 27, 1911.

No. 139, carbon telegram to salesmen, September 14, 1911.

No. 140, 140-a and 140-b, Westerfield to Menefee (no date), telegram to Westerfield, September 14, 1911; carbon letter Menefee to Westerfield, September 20, 1911.

No. 141, 141-a, 141-b and 141-c, carbon circular telegram, September 28, 1911.

No. 142, and 142-a, White to LeMonn, September 27, 1911.

No. 143 and 143-a, carbon circular telegram, October 4, 1911.

No. 144, carbon letter LeMonn to salesmen, October 5, 1911.

No. 145, carbon letter LeMonn to White and Hunter, October 9, 1911.

No. 146, 146a, 146b, 146c, 146d, 146e, carbon circular telegrams, October 19, 1911.

No. 147 and 147a, carbon circular telegram, October 26, 1911.

No. 148, carbon letter Menefee to Westerfield, October 26, 1911.

No. 149 and 149a, Westerfield to LeMonn, October 29, 1911; carbon letter of reply, November 4, 1911.

No. 150, carbon letter LeMonn to Sewall, October 30, 1911.

No. 151, carbon circular telegram, October 31, 1911.

No. 152, carbon letter LeMonn to Roles and others, Nov. 10, 1911.

No. 153, carbon letter LeMonn to Armstrong, Nov. 11, 1911.

No. 154, carbon letter LeMonn to Urquhart and others, December 2, 1911.

No. 155, carbon letter LeMonn to Armstrong, November 6, 1911.

No. 156, carbon letter LeMonn to Hopson, Hunter and others, December 9, 1911.

No. 157, carbon letter LeMonn to Westerfield, December 20, 1911.

No. 158, Westerfield to company, December 24, 1911; carbon telegram and letter of reply.

No. 159, Hopson to Menefee, December 28, 1911.

No. 159a, carbon letter Menefee to Lewis H. Lee, Jan. 2, 1912.

No. 160, letter Hunter and Hopson to LeMonn, Feb. 20, 1912.

No. 161, carbon letter Menefee to Hunter and Hopson, January 11, 1912.

No. 162, letter LeMonn, from Chicago, to Menefee, Jan. 7, 1912.

No. 163, telegram LeMonn from Detroit to Menefee, Jan. 10, 1912.

No. 164, page 34 of minute book No. II, United States Cashier Company.

No. 165, carbon telegram Menefee to LeMonn, Jan. 15, 1912.

No. 166, carbon circular telegram, January 16, 1912.

No. 167, carbon letter LeMonn to Jos. Hunter and others, January 27, 1912.

No. 168, carbon letter Menefee to O'Callaghan, Jan. 16, 1912.

No. 169, carbon circular telegram, January 24, 1914.

No. 170, carbon letter LeMonn to Amsden and others, Jan. 30, 1912.

No. 171, carbon letter LeMonn to Lanning and others, Jan. 30, 1912.

No. 172, carbon letter LeMonn to Muraine and other agents, together with circular telegram, February 19, 1912.

No. 173, carbon letter Menefee to Davidson, August 6, 1913.

No. 174, carbon circular telegram, February 28, 1912.

No. 175, carbon letter LeMonn to Amsden, March 1, 1912.

No. 176, carbon circular telegram, March 7, 1912.

No. 177, carbon letter LeMonn to F. E. Hall, March 19, 1912.

No. 178 and 178a, letter of M. Amsden, April 3, 1912.

No. 179, carbon LeMonn to Amsden, April 4, 1912.

No. 180, carbon letter LeMonn to Amsden, April 9, 1912.

No. 181, carbon letter LeMonn to Armstrong, March 29, 1912.

No. 182, carbon circular telegram, April 11, 1912.

No. 183a and 183b, telegram Hopson to LeMonn, April 13, 1912.

No. 184, carbon letter LeMonn to Hopson, April 22, 1912.

No. 185, carbon letter LeMonn to F. E. H., April 22, 1912.

No. 186, carbon telegram Menefee to Amsden, February 14, 1915.

No. 187, carbon circular telegram, April 24, 1912.

No. 188, 188a, 188b and 188c, Hopson to LeMonn, April 27, (1912?).

No. 189, carbon letter LeMonn to C. G. Hall, June 7, 1912.

No. 190, Hopson to Menefee, June 13, 1912.

No. 191 and 191a, carbon letter Menefee to Hunter and Hopson, June 22, 1912.

No. 192, carbon letter of president to Mr. Bell, Aug. 20, 1912.

No. 193 and 193a, telegram Hunter and Hopson to Menefee, June 7, 1912, and reply.

No. 194, telegram Hopson to Menefee, June 20, 1912.

No. 195, carbon telegram Menefee to Hunter and Hopson, July 8, 1912.

No. 196, letter LeMonn to Lydell Baker, April 3, 1912.

No. 197, printed article in the Pacific Banker of date April 6, 1912.

No. 198, bill of Pacific Banker.

No. 199, carbon letter LeMonn to Griffiths, April 8, 1912.

No. 200, circular LeMonn to stockholders, April 8, 1912.

No. 201, copy National Cash Register Company letter to LeMonn, January 8, 1912.

No. 202, copy letter Menefee to Wolcott, August 5, 1912.

No. 203, letter Menefee to E. Klein, December 3, 1910.

No. 204, letter Menefee to Klein, December 19, 1910.

No. 205, letter Menefee to Klein, January 24, 1911.

No. 206, LeMonn to Klein, January 28, 1911.

No. 207, copy letter Klein to company, April 15, 1912.

No. 208, carbon letter LeMonn to Klein, May 9, 1912.

No. 209, letter Klein to company, June 17, 1912.

No. 210, carbon letter to Klein, June 21, 1912.

No. 211, carbon telegram LeMonn to Klein, July 2, 1912.

No. 212, letter Menefee to Klein, July 23, 1912; indictment count No. 2.

No. 213, telegram Klein to company, July 31, 1912.

No. 214, copy telegram LeMonn to Klein, August 5, 1912.

No. 215, telegram Klein to Menefee, August 5, 1912.

No. 216, letter Klein to LeMonn, August 6, 1912.

No. 217, copy letter Menefee to Klein, August 9, 1912.

No. 218, carbon letter LeMonn to Menefee, August 12, 1912.

No. 219, syndicate agreement, dated August 28, 1912, with Dr. A. A. Milliken.

No. 220, letter Menefee to Dr. Milliken; indictment count No. 3.

No. 222, letter Menefee to Armstrong, October 18, 1912.

No. 223, Mrs. Zoekler's subscription form, 50 shares, February 14, 1912.

No. 224, copy letter United States Attorney to stockholders, December 15, 1914.

No. 225, G. W. Steiner, check for \$300, April 15, 1913.

No. 226, G. W. Steiner receipt for \$300, signed by P. Muraine, April 5, 1913.

No. 227, certificate of stock No. 6127 for 10 shares to G. W. Steiner, April 7, 1913.

No. 228, certificate of stock No. 5930 for 50 shares to John Straub, February 20, 1913.

No. 229, certificate of stock No. 5931 for 50 shares to John Straub, February 20, 1913.

No. 230, two sheets containing data concerning stock sales out of Menefee special account.

No. 231, letter Menefee to J. W. Brett, July 24, 1913; indictment count No. 9.

No. 232, carbon letter LeMonn to Armstrong, February 29, 1912; indictment count No. 8.

No. 233, Rearick note for \$2800, February 17, 1913.

No. 234, contract between O. A. Campbell and Eugene Loan & Savings Bank, for the purchase of a payroll machine for the price of \$400, and providing for a refund of the purchase price, if for any reason the bank does not wish to use the machine.

No. 235, facsimile copy of check of Eugene Loan & Savings Bank for \$500, April 28, 1913.

No. 236, O. A. Campbell, deposit slip for \$500.

No. 237, deposit slip O. A. Campbell, February 24, 1913, for \$2800, being amount of notes of E. O. Tobey and John Straub, each for \$1400.

No. 238, check of C. M. McMahan to O. A. Campbell for \$300, September 29, 1911.

No. 239, letter of LeMonn to John Marshall, November 11, 1911.

No. 240b, circular to John Marshall, February 17, 1912; indictment count No. 11.

No. 241, Baker to Mears, August 19, 1914.

No. 242, letter Gernert to C. B. Clark, July 11, 1912.

No. 243, Gernert receipt to C. B. Clark, August 9, 1912, for \$2500.

No. 244, letter Menefee to C. B. Clark, August 19, 1912.

No. 245, letter Menefee to Clark, December 28, 1914.

No. 246, letter Menefee to Bockes, December 1, 1910.

No. 247, original letter LeMonn to Bockes, November 28, 1910.

No. 248, original letter LeMonn to Bockes, January 23, 1911.

No. 249, original letter LeMonn to Bockes, January 28, 1911.

No. 250, carbon LeMonn to Roles, June 2, 1911.

No. 251, carbon LeMonn to Campbell, June 10, 1911.

No. 252, carbon letter Menefee to Cloftin, July 10, 1911.

No. 253, carbon letter LeMonn to Sewall, November 9, 1911.

No. 254, carbon letter Menefee to Bonnewell, January 18, 1912.

No. 255, carbon letter Menefee to Moyer, January 22, 1912.

No. 256, carbon letter LeMonn to Bonnewell and agents, February 1, 1912.

No. 257, carbon letter LeMonn to Hunter and Hopson, February 2, 1912.

No. 258, circular to stockholders, February 17, 1912.

No. 259, carbon letter LeMonn to Armstrong, February 25, 1912.

No. 260, carbon letter LeMonn to Amsden, March 7, 1912.

No. 261, carbon letter LeMonn to William Baker, March 13, 1912.

No. 262, 262a, telegram Armstrong to Company and reply, March 20 and 21, 1912.

No. 263 and 263a, C. H. Nash to LeMonn, March 6, 1912, and reply, March 22, 1912.

No. 264, carbon letter LeMonn to F. E. Hall, April 13, 1912.

No. 265, carbon letter LeMonn to Bonnewell and others, May 4, 1912.

No. 266, 266a and 266b, telegram R. G. Hall to LeMonn, May 4, 1912, and LeMonn's reply by telegraph and letter May 6.

No. 267, letters LeMonn to agents, May 16, 1912.

No. 268, Dr. Nagle to LeMonn, May 15, 1912, and reply by Menefee, May 17, 1912.

No. 269, carbon letter Menefee to Jaynes, May 28, 1912.

No. 270 and 270a, Ruth Badger to company, July 10, 1912.

No. 271, carbon letter Menefee to Bank Examiner of Kansas, September 4, 1912.

No. 272, carbon letter Menefee to Dr. Nagle, September 30, 1912.

No. 273, carbon letter Menefee to Westerfield, October 8, 1912.

No. 274, carbon letter Menefee to Tillinghast, January 2, 1913.

No. 275, carbon letter Menefee to Abbott, January 2, 1913.

No. 276, 276a, letter LeMonn to First National Bank of Bend, Oregon, December 14, 1911.

No. 277, carbon copy letter Menefee to Barnes, Jan. 24, 1912.

No. 278, carbon letter Menefee to Abbott, January 25, 1913.

No. 279, original letter Menefee to Flatonia Bank, Flatonia, Texas, January 1, 1913.

No. 280, carbon letter Menefee to agents, February 13, 1913.

No. 281, carbon letter Menefee to Dix, March 11, 1913.

No. 282, carbon letter Menefee to First National Bank of Portland.

No. 283, carbon Menefee to Dix, March 24, 1913.

No. 284, carbon letter Menefee to Dix, March 26, 1913.

No. 285, reprint from Eugene Daily Guard, April 28, 1913.

No. 286, letter Menefee to Emma G. Hedges, Sept. 4, 1914.

No. 287, note given by J. W. Zufall to Gernert for \$50, December 9, 1911.

No. 288, original letter Gernert to LeMonn, February 24, 1912.

No. 289, carbon letter LeMonn to Gernert, March 2, 1912.

No. 290, carbon letter Menefee to Gernert, December 5, 1911.

No. 291, Gernert to Menefee, December 14, 1911.

No. 292, carbon letter Menefee to Gernert, December 9, 1911.

No. 293, copy contract with Gernert, Feb. 10, 1912, for working in California.

No. 294, carbon letter LeMonn to Gernert, March 2, 1912.

No. 295, carbon letter LeMonn to Gernert, March 22, 1912.

No. 296, Dr. Zener, subscription blank, November 16, 1911, for 25 shares.

No. 297, letter Menefee to Dr. Zener.

No. 298, carbon letter LeMonn to Gernert, June 5, 1911.

No. 299a and 299b, correspondence with Bear River Valley Implement Company.

No. 300, carbon letter LeMonn to F. E. Hall, March 1, 1912.

No. 301, 301b, inquiry from D. C. Harrington, Sioux Falls, N. D., March 2, 1912, and LeMonn's reply, March 9, 1912, with copy to Griffith.

No. 302, carbon letter LeMonn to Dr. C. S. G. Nagle, April 1, 1912.

No. 303, carbon letter to B. F. Bonnewell, October 19, 1912.

No. 304, carbon letter to C. G. Hall, October 31, 1912.

No. 305, 305a, 305b and 305c, pictures of the original photograph shown by Oviatt to Bullington in August, 1910.

No. 306, pamphlet advertising the Payograph.

No. 307, copy of letter Robb to Overlin, October 5, 1911.

No. 308, Osborne patent.

No. 309, picture of payroll machine with drum currency paying attachment.

No. 310, picture of currency paying machine.

No. 311, carbon letter LeMonn to Armstrong, November 4, 1911.

No. 312, carbon letter LeMonn to Griffith & Graham, December 7, 1911.

No. 313, carbon letter Menefee to Hunter & Hopson, Jan. 2, 1912.

No. 314, telegram Hunter and Hopson to Menefee, Jan. 11, 1912.

No. 315, carbon letter Menefee to Amsden, January 13, 1912.

No. 316, telegram Hunter and Hopson to company, Jan. 19, 1912.

No. 317, carbon letter Menefee to Amsden, Jan. 22, 1912.

No. 318, carbon letter LeMonn to Malthouse, Feb. 3, 1912.

No. 319, carbon letter LeMonn to Hall, February 6, 1912.

No. 320, carbon letter LeMonn to Hall, February 7, 1912.

No. 321, carbon letter LeMonn to Hall, February 21, 1912.

No. 322, telegram LeMonn to Malthouse, March 1, 1912.

No. 323, telegram Bonnewell to company, March 7, 1912.

No. 324, carbon letter LeMonn to Armstrong, March 8, 1912.

No. 325, carbon letter Menefee to Hunter and Hopson, March 14, 1912.

No. 326, circular Menefee to salesmen, March 14, 1912.

No. 327, telegram LeMonn to Hopson, March 22, 1912.

No. 328, carbon letter LeMonn to Moore and Muraine, April 30, 1912.

No. 329, b and c, telegram Hunter and Hopson to LeMonn, May 12, 1912.

No. 330, a, b and c, telegrams between Menefee and Davidson, July 27, 1912.

No. 331, carbon letter Menefee to Armstrong, October 2, 1912.

No. 332, carbon letter Menefee to Tillinghast, Jan. 22, 1913.

No. 333, telegram Menefee to Ford Dix, February 5, 1913.

No. 334, carbon letter Menefee to Davidson, November 10, 1913.

No. 335, telegram Hackney to Menefee.

No. 336, telegram Menefee to Armstrong, February 21, 1913.

No. 337, carbon letter Menefee to Dix, March 1, 1913.

No. 338, carbon letter Gloyd to Hunter and Muraine, March 17, 1913.

No. 339, carbon letter Menefee to agents.

No. 340, carbon letter Menefee to Amsden, May 13, 1913.

No. 341, telegram Dix to Menefee, June 9, 1913.

No. 342, telegram Menefee to Armstrong, August 23, 1913.

No. 343, certified copy patent No. 886,307.

No. 344, certified copy patent No. 1,114,574.

No. 345, certified copy patent No. 985,136.

No. 346, certified copy application for patent No. 555,552.

No. 347, certified copy application for patent No. 617,201.

No. 348, certified copy application for patent No. 658,434.

No. 349, certified copy application for patent No. 702,164.

No. 350, certified copy application for patent No. 710,512.

No. 351, certified copy application for patent No. 717,977.

No. 352, certified copy application for patent No. 729,093.

No. 353, certified copy application for patent No. 729,704.

No. 354, certified copy application for patent No. 742,958.

No. 355, certified copy application for patent No. 755,817.

No. 356, certified copy application for patent No. 767,335.

No. 357, certified copy application for patent No. 836,771.

No. 358, certified copy application for patent No. 838,065.

No. 358, certified copy application for patent No. 728,853.

No. 360, telegram Menefee to LeMonn, January 10, 1912.

No. 361a and b, telegrams between Menefee and LeMonn, April 17 and 18, 1912.

No. 362, original letter Baker to Menefee, May 4, 1913.

No. 363, original letter Baker to Menefee, May 6, 1913.

No. 364, carbon letter Menefee to Baker, May 10, 1913.

No. 365, original letter Baker to Menefee, May 14, 1913.

No. 366, carbon letter Menefee to Baker, May 17, 1913.

No. 367, carbon letter Menefee to Joseph Hunter, June 27, 1913.

No. 368, original letter Menefee to Robb, April 19, 1912.

No. 369, original letter Menefee to Robb, October 15, 1913.

No. 370, original letter Menefee to Robb, November 8, 1913.

No. 371, Advisory Board agreement with R. L. Glisan.

No. 372, certified copy of Bilyeu's admission as patent attorney.

No. 373, carbon letter Menefee to Lanning, January 4, 1911.

No. 374, circular to stockholders, June 1, 1911.

No. 375, circular Menefee to stockholders, June 28, 1911.

No. 375, carbon LeMonn to salesmen, July 15, 1911.

No. 377, carbon letter LeMonn to salesmen, August 9, 1911.

No. 378, carbon letter LeMonn to Sewall, August 16, 1911.

No. 379, carbon letter LeMonn to Armstrong, November 8, 1911.

No. 380, original letter Menefee to Robb, September 12, 1912.

No. 381, telegram Menefee to Gloyd, November 29, 1912.

No. 382a and 382b, telegram to agents, November 30, 1912.

No. 383, original letter Menefee to Gloyd, November 29, 1912.

No. 384, letter of Dix to Menefee, December 3, 1912.

No. 385, carbon letter Menefee to William Davidson, March 7, 1913.

No. 386, Kobusch contract.

No. 387, Losli subscription blank, September 5, 1910.

No. 388, Losli receipt for \$130, October 12, 1910.

No. 389, Losli receipt for \$100, November 9, 1910.

No. 390, Losli receipt for \$150, December 9, 1910.

No. 391, Envelope of George Losli on which he has written address of U. S. Cashier Company.

No. 392, original letter Menefee to Gloyd, December 20, 1913.

No. 393, original letter Menefee to Gloyd, December 23, 1913.

No. 394, original letter Menefee to Gloyd, December 26, 1913.

No. 395, original letter Menefee to Gloyd, January 15, 1914.

No. 396, carbon letter LeMonn to Bilyeu, February 23, 1911.

No. 397, carbon letter Menefee to Bilyeu, July 17, 1911.

No. 398, telegram Bilyeu to Menefee, July 19, 1911.

No. 399, statement to stockholders.

No. 400, original letter Menefee to Gloyd, May 17, 1913.

No. 401, statement to stockholders.

No. 402, carbon copy letter LeMonn to salesmen, Feb. 28, 1911.

No. 403, carbon copy letter LeMonn to Urquhart, Feb. 6, 1912.

No. 404, original letter Menefee to Roles, November 22, 1911.

No. 405, letter LeMonn to Menefee, April 6, 1912; and copy letter LeMonn to Schulmerich, April 3, 1912.

No. 406, letter Menefee to Baker, May 13, 1912, and copy letter Baker to Menefee, May 9, 1912.

No. 407, telegram Menefee to Bonnewell, August 8, 1912.

No. 408, copy letter LeMonn to Bonnewell, August 19, 1912.

No. 409, telegram LeMonn to Bonnewell, December 9, 1912.

No. 410, original letter Bonnewell to U. S. Cashier Company, February 1, 1912.

No. 411, original letter Bonnewell to U. S. Cashier Company, February 12, 1912.

No. 412, page 190, minute book No. II, United States Cashier Company.

No. 413, carbon letter LeMonn to Hunter, January 30, 1913.

No. 414, original letter LeMonn to Bauer, March 28, 1912.

No. 415, original letter Menefee to Johnson, August 19, 1912.

No. 416, carbon letter LeMonn to Bonnewell, April 7, 1912.

No. 417a and 417b, telegrams between Bonnewell and LeMonn, August 27, 1912.

No. 418a and 418b, telegrams between Menefee and Bonnewell, May 19, 1912.

No. 419, telegram Menefee to Amsden, June 5, 1912.

No. 420, copy letter Baker to Mears, May 19, 1914.

No. 421a, copy letter Baker to Mears, May 25, 1914.

No. 421b, copy letter Robb to Baker, May 21, 1914.

No. 422, copy letter Baker to Mears, May 26, 1914.

No. 423, copy letter Baker to Mears, Aug. 23, 1914.

No. 424, copy letter Baker to Mears, Apr. 11, 1915.

No. 425, copy letter Baker to Mears, Oct. 1, 1914.

No. 426, minute book United States Cashier Company.

No. 427, tabulated statement.

No. 428, original letter Menefee to Baker, July 16, 1914.

No. 429, original letter Hayes to U. S. Cashier Company, February 7, 1912.

No. 430, original letter LeMonn to Lepper, February 7, 1912.

No. 431, telegrams between Menefee and Roberts, March 7, 1912.

No. 432, telegrams First National Bank to U. S. Cashier Co., May 13, 1912; and replies from Menefee dated May 13, 1912, and telegram Hunter and Hopson to Menefee, May 13, 1912.

No. 433, circular from Menefee to stockholders, Oct. 13, 1911.

No. 434, (same as 374).

No. 435, original letter Menefee to Acheson and Bourke, March 14, 1913.

No. 436, original letter Menefee to Acheson and Bourke, April 4, 1913.

No. 437, tabulated statement.

No. 438, telegram White to Menefee, September 27, 1911.

No. 439, tabulated statement.

No. 440, letter to Gernert, March 12, 1912.

No. 441, carbon copy letters Menefee to Muraine, May 15, 1912, and Hunter, May 16, 1912.

No. 442, telegram, May 25, 1913, Menefee to Baker; letter Menefee to Baker, May 28, 1913; letter Baker to Menefee, May 27, 1913.

And the plaintiff offered testimony which was received and which tended to prove that the American Cash Record Company was a corporation organized

and existing under the laws of the state of Washington, and that during all of the times mentioned, specified stated in the indictment the defendant, Thomas Bilyeu, was the president and a director thereof, and was the owner of one-fourth of its capital stock; that the United States Cashier Company, on September 28, 1910, purchased from the American Cash Record Company applications for patent No. 555,552; No. 519,489 and No. 522,240, for a purchase price of \$200,000 in cash and \$60,000 of the stock of the United States Cashier Company; that from time to time thereafter and up to and including the year 1913, the United States Cashier Company made many cash payments to the American Cash Record Company and to the defendant, Thomas Bilyeu, and that the defendant Bilyeu, during these years, received in cash from the United States Cashier Company, on account of said contract, more than the sum of \$50,000; that in November, 1911, the United States Cashier Company purchased from the defendant Thomas Bilyeu certain patent rights covering the same applications for the republic of Mexico for the sum of \$15,000, but that the United States Cashier Company never did anything with any of these rights; that in June, 1912, the United States Cashier Company purchased from the defendant Bilyeu and one Overlin the rights to a currency machine that had been built by Overlin. The consideration of this purchase was that the company was to sell for Bilyeu and Overlin 1600 shares of stock owned by them and to pay them for the stock at the rate of \$12.50 per share.

There was evidence tending to show that the defendant Bilyeu saw the advertisements in the Oregonian,

Journal and Telegram referred to in this bill. The plaintiff offered evidence tending to prove that upon one occasion the defendant Bilyeu had assisted in the sale of the stock of the United States Cashier Company and had represented to the purchaser that the company owned the patents to all the machines which it was advertising and selling. The plaintiff offered evidence tending to prove that during all of the times mentioned in the indictment the defendant Bilyeu was a duly licensed and regularly admitted patent attorney.

But Mr. Bilyeu, being called as a witness and sworn, denied the foregoing facts, so far as they related to the sale of any stock by Bilyeu.

At the conclusion of all the testimony offered by both the plaintiff and THE DEFENDANTS, the court directed a verdict in favor of the defendant Bilyeu.

The plaintiff offered evidence which was received and which tended to prove that the defendants Menefee and LeMonn, for the purpose of inducing prospective purchasers to purchase the stock of the United States Cashier Company, had written letters to said prospective purchasers in which the statement was made that the patent office at Washington, D. C., could not give the company a single citation wherein the patents of the United States Cashier Company were infringing on any other patents previously granted and that the United States Cashier Company had made extensive research by the ablest patent attorneys in Washington, D. C., and that said patent attorneys had assured the

company that they had full protection for all time to come.

The following is taken from a circular letter dictated by Menefee and dated October 13, 1911:

“We also feel gratified in announcing that we are not only the absolute owners of our patents, but that we have not had the slightest intimation of trouble from any source in the way of infringement or otherwise. The patent office at Washington, D. C., could not give us a single citation wherein our patents were infringing on any other patents previously granted and we have also had made extensive research by the ablest patent attorneys in Washington, D. C., and they have assured us that we have full protection for all time to come.”

And the plaintiff offered testimony which was received and which tended to prove that prior to the time that said last mentioned letters were written and that during all of the times thereafter, John F. Robb, of Washington, D. C., was the patent attorney for the said United States Cashier Company; that prior to the time that Menefee and LeMonn had written the said letters stating that the patents of the United States Cashier Company did not infringe any prior issued patent, and that the patent office at Washington, D. C., could not give the United States Cashier Company a single citation wherein the patents of the said company would infringe on any other patents previously granted, and that the patent attorneys for the United States Cashier Company had assured it that it had full pro-

tection for all time to come, that the defendants Menefee and LeMonn had received from the said patent attorney, John F. Robb, written notice that certain prior issued patents, one issued to a man by the name of Lindeloff and two others issued to the National Cash Register Company, would be infringed by the applications for patents of the said United States Cashier Company, and that the application of the United States Cashier Company for the patent to the Bilyeu cashier and the application of said company for the patent to its computing machine would infringe said prior issued patents.

The following letter was written by Robb to Menefee on September 15, 1911:

“In conclusion, I beg to state that thus far in my infringement research, I have located one patent which is clearly infringed by the use of a certain feature of the change machine. The patent is within five years of expiration, and was granted to a foreigner. It is my purpose to consider carefully the desirability of acquiring the above patent in order to strengthen your protection, but will advise fully on this subject when I forward infringement report.”

On October 5, 1911, Robb wrote the Company as follows:

“I have not received as yet further advices supplementing Mr. Overlin’s night letter answered on the 26th of Sept. You will understand that I was interrupted in the infringement work by instructions in said night letter and would like to know

whether the report covering my work completed to date is to be sent or is it to be delayed until some further developments? I think this of grave importance because in the infringement search I have run across certain patents controlled by the National Cash Register Company which will affect our computing machine. Indeed, I believe that the portion of my report directed to the above matter may be the most important development of my work because it is probable that a consultation of your mechanical department and the officers of your company may have to be called to determine upon your future operations in the computing machine line. Unless I run across some other patents bearing on this line, the National Cash Register Company people have protection that may seriously interfere with us."

On the same day, October 5, 1911, Robb wrote W. S. Overlin, in part as follows:

"The most important thing that I have accomplished in the search so far has been the location of two patents in this art controlled by the National Cash Register Company and which will affect seriously our computing machine."

On February 26, 1912, Menefee wrote Robb, in part as follows:

"Will you kindly address a letter to Mr. Emil Welkey, No. 805 Blue Island Ave. Chicago, Ill., with reference to the protection afforded to us by

our patents. * * * Then would suggest that you go into the question of your research for the company and give him your opinion as to the strength of our position from a patent standpoint.”

On March 4, 1912, Robb wrote to Menefee as follows:

“In regard to letter sent Mr. Welky and referred to today in communication sent the company, we believe it well to bring to your attention personally that we have not referred in said letter to our infringement search because we could not give him much in the way of assurances of non-infringement, having in view the progress we have thus far made in our investigation. As a matter of fact, we have come across some five patents that will be infringed by your company in its operations, and the infringement of which might lead to serious complications later, so far as it is possible to anticipate at this time. We ignore in this connection some minor infringements that we do not believe will be of particular importance. We could not consistently advise Mr. Welky therefore that our infringement investigation indicated that your company will most likely not be interfered with in the marketing of your machines and therefore deemed it best to omit reference in this connection entirely.”

Under date of January 22, 1912, Robb wrote LeMonn in part as follows:

“Now as to possibilities, I have intimated in correspondence with Mr. Overlin, which has doubt-

less been brought to Mr. Menefee's attention, that we have run into National Cash Register Company patents for a starter, seriously from the view point of infringement, how seriously from the ultimate objective of validity of said patents cannot be indicated until a later stage of the proceedings. This situation was an important one we intended to bring to his attention. Have also located at least one patent of importance also infringed, and which will probably advise company to acquire. My correspondence with the inventor leads me to believe that this latter will present little difficulty."

These seven letters are the letters hereinbefore referred to relative to the said notice of the said infringements.

And the plaintiff offered testimony which was received and which tended to prove that during the times mentioned, stated and specified in the indictment, the United States Cashier Company received in cash from the said INVESTORS and many and divers other persons on account of the sale of capital stock to said persons in cash the sum of \$760,165; that it had disbursed over \$400,000 to its agents as commissions upon the sale of its capital stock; that the defendant F. M. LeMonn received a commission of ten per cent of all amounts received for the sale of said capital stock; that the defendant Frank Menefee received a commission of ten per cent upon said sales; that to the agent making the sale of said stock there was by said corporation paid a further and additional commission of thirty per cent on account of the sale of said capital stock; that approxi-

mately \$1,500,000 in cash and property were received by the said United States Cashier Company during said times on account of the sales of its capital stock; that no dividend was ever declared to any of the stockholders of said corporation and that the company was never in a position to declare or pay any dividend; that each, every and all of **THE DEFENDANTS** received large sums of money from the said United States Cashier Company over and above all of the amounts paid in to said company by them and each of **THE DEFENDANTS** made large profits during all of said times in selling and disposing of their own personal stock of said corporation.

That there was evidence tending to prove that all of the above sums of money received by Mr. Menefee were received by him under and by virtue of a contract which he made with the directors of the company about the time he became a stockholder and manager of the company, which contract was duly approved by resolution of the Board of Directors, and which contract was to the effect that he was to receive ten per cent of the amount derived from the sale of the stock of said corporation.

There was also evidence tending to prove that the defendant LeMonn, at the time of his first employment by the company, had a contract with the company by which he was to receive thirty per cent, and in a few cases thirty-three and a third per cent of the proceeds derived from the sale of the stock of the said corporation, which contract was duly approved by the board of directors.

And after the Government had called, to prove the foregoing facts, sixty-four witnesses, the plaintiff called N. C. Oviatt, as a witness, who, being sworn, testified that his name was Nelson C. Oviatt; that he lived at Detroit, Michigan, and was engaged in the manufacture of coin paying machines, called the Payograph, was President of the Payograph Company, which was a corporation organized under the laws of Michigan, incorporated for \$300,000, with the principal office in Detroit, and having machines manufactured for it in New Haven, Connecticut; that he was acquainted with the defendant Thomas Bilyeu, met him first in the summer of 1909, in the Ainsworth Block, Portland, Oregon; that the witness had been in Portland since 1892, first in the manufacture of silver spoons, later as an employee of Multnomah County, in the tax collection department, and later as coast agent for the Comptograph Company of Chicago, in the sale of adding machines, and also representing the Brandt Cashier Company in the sale of Brandt Automatic Cashiers. That he had devised the principles of a coin paying machine and had gone to Mr. Glover, a public engineer, with a view of having him develop it for the witness, but he was unable to do so, and that he presented it to Mr. Bilyeu; that Mr. Bilyeu took it under consideration, and after two days of deliberation said he would take it on, with the understanding that he would have forty per cent of the results, and that the witness was to have the other sixty per cent of the results; that the agreement was not in writing; that the witness was to turn over to Bilyeu his ideas, and Bilyeu was to proceed

with the development and put it into working shape, and build a model.

Thereupon the counsel for the defendants, Mr. Pipes, asked the District Attorney: "May I ask what the purpose of this evidence is?" And the District Attorney answered to the Court and jury: "The purpose of this evidence is to show that back in 1909, witness, Mr. Oviatt, was working upon a coin paying machine, and that he made a full and complete disclosure to the defendant Bilyeu; and we are going to then proceed to follow the making of the machine known as the Payograph, and the knowledge of the Payograph as it was brought home to the defendants, the attempted sale of a similar machine by the defendants in England, and their knowledge of the Payograph applications pending there; conversations had between Bilyeu and Menefee and LeMonn with this witness; bring these transactions down to the date where LeMonn made an investigation of the Payograph machines personally, and sent the telegram here that has been introduced in evidence."

Thereupon counsel for the defense, Mr. Pipes, asked: "For the purpose of showing that the Bilyeu patent is not good?" To which the District Attorney answered: "I don't know whether it will go that far or not, but it will go to the extent of showing the knowledge of the defendants of the work that Mr. Oviatt was doing."

Thereupon counsel for defendants interposed an objection to the said evidence, in the following language: "Now your Honor, I think I will interpose an objection

upon that statement of counsel. The allegation in this indictment is that there were representations made that the defendants, the Cashier Company, had certain patents. It did have a patent, which it got from its predecessors, and there is a record of the company, which is called the Bilyeu patent. Now, in this case, I take it that this court has no jurisdiction to try out the question between Mr. Oviatt on the one side, and Mr. Bilyeu on the other, as to who is entitled to that patent. That has been determined by the Department, and if there is an infringement or a conflict between Mr. Oviatt and this defendant, that is a matter to be settled by a court having jurisdiction to try it, and it doesn't seem to me that collaterally, in this case, the Government can attack a patent upon an allegation that we didn't have it. If we have got it, and had it, it was a true representation; whether it is good, or conflicts with somebody else's patent, or Mr. Oviatt's would depend, of course, upon the decision of the court in a suit brought for that purpose. For the purpose for which this evidence is offered, I make the objection. If it is admissible on any other ground, of course the counsel could state it, but upon the ground of showing that Mr. Oviatt and not Mr. Bilyeu is entitled to the benefit of that patent, and that Mr. Oviatt and not this company, is entitled to the benefit of the patent, which the company has got, we think that would be submitting to the jury a question that they ought not to have to try, because it might very well be said that, upon the evidence adduced in this case collaterally, if counsel is right in his contention, the jury might find that Mr. Oviatt had the better right;

I don't think they would, but they might, if it is competent for the evidence to be introduced; and yet upon a trial between them in a court having jurisdiction, it might be determined that Mr. Oviatt didn't have the better right; so you might have a decree in a criminal case, or a judgment in a criminal case, deciding against the defendant upon that issue collaterally; and it seems to me that ought not to be submitted to the jury, at least for that purpose."

To which objection and argument the United States District Attorney replied as follows: "Of course, your Honor will remember that at the beginning of the Government's case, we introduced in evidence a contract entered into between the American Cash Record Company, on the one part, and the United States Cashier Company, upon the other, by the terms of which certain patent rights alleged to be the property of the American Cash Record Company were sold to the United States Cashier Company. Now, one of the allegations in the indictment is that the stock in this company was worthless, and that these defendants knew it to be worthless. Now, anything that the Government could introduce that would tend to prove that this company, the United States Cashier Company, knew that what was being offered for sale had no value, would tend to sustain the allegations of the Government's complaint, that its stock was worthless. If the Government were able to prove that the United States Cashier Company was demonstrating machines, even for which they may have owned a nominal patent, when one of the defendants knew of the great and grave danger that

the company would experience whenever they proceeded to market or sell that machine, why, it seems to me that would be one element of fraud, and would go to substantiate the charge in the indictment that the stock of the United States Cashier Company was not of the value that it was represented to be by the defendants."

Thereupon the counsel for defendants, Mr. Pipes, asked the following question of Mr. Reames: "May I ask a question, Mr. Reames? Is this particular patent the one that you do not negative in the indictment?" and Mr. Reames answered: "Yes, the one that is not negated in the indictment."

Thereupon counsel for the defendants made another objection, in this language: "Then there is another question that occurred in the early part of this case. The allegation is that the defendants represented that they had patents on all of these machines, whereas, in truth and in fact, the indictment says they had patents only on one. That is to say, this particular patent is not negated, and that being so, I take it that that is an admission, and not a matter in issue in this case, as to the existence, and of course the validity of that patent. I take it that in an indictment, as in any other pleading, it is not sufficient to say that the representation is false, but it must be further shown by explicit allegation, in what respect it is false. Now, when it is said it was a false representation, in this indictment, that all these machines were patented, whereas in truth and in fact, the truth was that one of them was patented, or at least that there was no misrepresentation as to this

particular machine, I take it that that is not in issue, but that it is to be taken as true in this case, not subject to be determined by the court or jury, but admitted by the indictment that this patent was truly represented, and therefore it cannot be a false representation, and no evidence can be introduced that has the slightest tendency to show that this patent was not a perfectly good patent, because it was the duty of the indictment, of the District Attorney in drawing the indictment, if he meant to, to tender to the defendants an issue upon that, to notify us by making a proper allegation."

Whereupon the Court ruled upon the said objection in the following language: "I think in view of the indictment, that it must be conceded, for the purpose of this trial, if there was a patent, that the company had a patent to this particular machine. Further than that, I don't suppose in this trial that the validity of the patent that has been issued by the Government can be tried or determined. There is evidence in this case tending to show that LeMonn made a visit east along in 1912, and learned of this particular instrument, and that it was being manufactured, and that he sent certain letters and certain telegrams to Mr. Menefee with reference to this matter, and advised a certain course of procedure, which the evidence shows the company subsequently took, and for that purpose, I think this testimony of their connection with this patent is material in this case, to show their good faith."

Thereupon counsel for the defendants said: "I am content with this limitation, that these two matters will

be instructed to the jury that the patent is (not) in controversy.”

And the Court said: “In this case I understand it is admitted in the indictment.”

And thereupon Mr. Reames said to the Court: “Before your Honor passes finally upon that, I would like to leave that part and pass on a little further, and offer it again this afternoon, and offer some authority upon it.”

Whereupon the Court said: “You can go on with the testimony, and later if it should be deemed material you can present the force and effect of it, but with that limitation, it will be admitted at this time.”

There had been evidence as stated by the Court tending to prove that the defendant LeMonn had made a visit east in the early part of 1912, and learned of the manufacture of this particular instrument, and that he sent letters and telegrams to the defendant Menefee with reference to the matter, which letters and telegrams described said machine, stated that he, LeMonn, believed it to be a winner and advised the defendant Menefee to not sell any more of the capital stock of the company until the private stock of the defendants Menefee, LeMonn and Campbell had first been disposed of; that subsequent to the receipt of the said telegram the defendants Menefee and Campbell, at Portland, Oregon, caused the board of directors of the United States Cashier Company to pass a resolution withdrawing all of the company's stock from the market and authoriz-

ing the defendants Menefee, LeMonn and Campbell to sell their own personal stock with the sales organization or sales force and the demonstration machines of the company, and that was the certain course of procedure referred to in the Court's statement.

There was evidence also tending to show that the information concerning the above instrument in the said letters and telegrams had no connection with the advice by LeMonn to Menefee not to sell any more of the capital stock until the private stock of the defendants Menefee, LeMonn and Campbell had first been disposed of, and that the resolution withdrawing the company's stock from the market was not on account of any information they had in respect to the said particular instrument.

To the ruling of the Court admitting the said evidence upon the question of the good faith of the (A) defendants, the defendants, by their counsel, then and there excepted, and the Court allowed the exception.

And thereupon the testimony of the witness was continued, and he testified that he disclosed to Mr. Bilyeu the basic principle, which was the connection of each individual key with a selector bar or rod, so that by a depression of that key the proper ejector or ejectors would be turned from a non-paying to a paying position. That Mr. Bilyeu said he would undertake the work, with the understanding that the results would be divided sixty per cent to the witness and forty per cent to Bilyeu, and that was agreeable to witness, and that they shook

hands on it. That Mr. Bilyeu said to him, "I will take you out to my model maker," which he did, in South Portland, to Mr. Overlin; that he had not seen Mr. Overlin before, and that Mr. Bilyeu introduced him to Mr. Overlin and said that the witness had been associated with Mr. Potter in the development of the machine, and had not been treated properly by Mr. Potter; that witness had devised a machine of his own and arranged with Bilyeu to develop it, and wanted Overlin to undertake the manufacture of a model; that Mr. Overlin accepted, and they returned to town. That Mr. Bilyeu advertised for a draftsman, and put him to work in the Ainsworth Building; that the model was constructed, and that a month or six weeks after that time Mr. Bilyeu said to the witness one day that he had been thinking the matter over for a week past, and had decided that the witness did not own anything in the device, and went on to say that he had applied for a patent in his own name, and the witness said there was nothing further to do except for witness to make a better machine, and that Mr. Bilyeu said he could not do it.

The witness further testified that he went east the 2nd of May, 1910, and went first to the Comptograph Company, with sketches, and then to the Wales people, and finally arranged for the building of the machine, and completed it in August, 1910, and that was the Payograph machine. That he applied for a patent on the machine in August, 1911; that the first model was made in August, 1910; that the second model was completed in 1912.

The witness was then shown photographs of the exterior of the machine, and identified them as photographs taken in August, 1910, and of a machine he had just completed and demonstrated to the executive board of the Wales Adding Machine Company.

Thereupon the Government offered the three photographs in evidence, to which offer the defendants, by their counsel, objected, subject to the ruling of the Court.

But the Court overruled the objection, and the (B) defendants took an exception, which was allowed.

The witness then continued that he returned to Portland the latter part of August, 1910; that he knew of a certain machine of the United States Cashier Company, known as the Bank Cashier, had heard of it and seen it, but never examined it closely; that he thought the machine was one that was covered by the application over the names of Bullington, White and Overlin; that in the year 1910 he met Mr. Bullington, and that he exhibited the three photographs in evidence to Mr. Bullington, in August, 1910. That he had met the defendant F. M. LeMonn in the office of the Payograph Company, in Detroit, in January, 1912, and that LeMonn told him that he had been at the office of the National Cash Register Company, and had there been told of the Payograph; that LeMonn had a little booklet descriptive of the Payograph, which he said had been given to him by the Paymaster. Witness identified a book which he said was exactly like the one LeMonn

showed him; that it was issued by the Payograph Company, and that it was the one that Mr. LeMonn brought to him at the time, one exactly like it and of the same issue, and that LeMonn said he had received it from the National Cash Register Company.

Whereupon the plaintiff offered the said booklet in evidence, to which offer the defendants' counsel objected, for the same reasons thereinbefore stated in his argument.

But the Court overruled the objection and received the exhibit, which is Exhibit "306," and is attached to and made a part of this Bill of Exceptions, to which ruling of the Court the defendants duly excepted, and the exception was allowed.

The witness, continuing, said that the defendant LeMonn said that he had been told of the Payograph by the Paymaster, Mr. Myer, and wished to see it, and, after questioning by the witness, said that he had been with the United States Cashier Company, but was not with them at that time, had got through selling stock, and was East looking for other things to finance, and asked the witness if he did not want him to take hold of the Payograph, and finance it, which the witness said he did not. The witness said he demonstrated the Payograph to LeMonn; that Mr. LeMonn expressed himself as pleased with it, went on East, and left his address, with the request that the witness think over the matter of financing the proposition and communicate with him if they decided to take him on to do the work. That the machine he demonstrated to LeMonn was the one

described in the little booklet, that there was no model of it. The witness further said he took half an hour to demonstrate the machine; that the machine would pay money, list it and add it; that he did not take the case off the machine, the mechanical part of it.

The witness, further testifying, said that he met Mr. Menefee in October, 1913; that Mr. Menefee came to his office in October, 1913, and told him that he was the President of the United States Cashier Company, and asked what they were going to do with the British patents, or if the witness had sold them, and he said he had not; that Menefee asked what they were going to do with them, and he said he had no plans other than to retain them; that Mr. Menefee then told him they were arranging for a syndicate in Britain to take over their British rights, and that he felt that upon investigation by the people there they might run upon the application and it might possibly interfere with the deal, and that he thought for the good of both it might be well to make some arrangement whereby the patent of the Cashier Company in Great Britain would be included with the patent of the Oviatt machine; that Menefee described to him the deal; that it was to be a million dollar corporation, of which \$200,000 stock was to be paid to the United States Cashier Company, and \$50,000 in cash, which was to be divided between Mr. Bilyeu and the United States Cashier Company, and that if the witness would come into the deal it would be split in thirds. That Menefee wanted him to combine their entire interests in one large corporation. The witness said he took the matter under consideration, and afterwards, in

about two weeks, told Menefee he would not entertain the deal.

The witness further testified that subsequent to this conversation and at the request of the defendants Bilyeu and Menefee, he had met said defendants in Chicago and that they had attempted to get the witness to go in with them upon a proposition by the terms of which the Payograph was to be included in a deal that **THE DEFENDANTS** had pending in England and the two said defendants represented to the witness that on account of the conflict in Great Britain between the machine of the United States Cashier Company and the deal of **THE DEFENDANTS** could not be closed without the co-operation of the witness. The witness further testified that he refused to consider said proposition.

The witness further testified that the Payograph machine had been patented in the London Patent Office, and that the Payograph Company owned it. The witness was asked to demonstrate the Payograph machine, a model of which was in the court room, which he did, and said that the adding machine was not his invention, but that the coin paying device was his invention and was connected to the adding machine so that when the key was depressed and the handle of the adding machine operated, the money is ejected into the hand or an envelope, and fully explained the working of his machine. He testified that his machine was so constructed that the adding machine could be used with or without the coin paying mechanism, that they were detachable.

Upon cross examination by Mr. Atkins, of counsel for the defendants, upon the patent question, the question was asked: "Have you any claim allowed upon that broad feature of combination?"

Whereupon the witness answered: "We are at present in interference."

Mr. Atkins: That doesn't answer my question.

Witness: Well, I don't think that it is proper to go into the other side in this court.

Mr. Atkins: "I believe, your Honor, it is held that all questoins are open to investigation of the court in a matter of this sort, and that the secrecy which the Patent Office observes, is not observed when matters are brought into court."

Whereupon the Court said: "I suppose the witness can state where it interferes."

And the witness answered: "There are no claims actually allowed that I know of, that cover that feature, that are not an interference." And witness further said that there was an interference on that very feature.

Thereafter, and in the course of the trial, Mr. Dobson, of counsel for Mr. LeMonn, asked the District Attorney to have the Oviatt machine brought back into court, after Mr. Oviatt had been excused, and the next morning, at the opening of the court, Mr. Reames offered the said machine, stating that he did not claim the right to have it demonstrated, that the machine was to be shipped East, but that it was at the disposal of the defendants.

Whereupon, the counsel for these defendants stated to the Court that they did not desire to have the machine demonstrated and that the machine could be sent East as far as they were concerned, but one of the jurors requested that the machine be demonstrated, and thereupon the witness proceeded to demonstrate the machine by actually operating it by putting money into it and by manipulating it, having the money paid out in envelopes, according to its design and purpose, the said demonstration being made in the presence of the jury.

To further sustain the issues on its part, the plaintiff called E. D. Sewell as a witness, who, being sworn, testified that his name was E. D. Sewell; that he lived at Washington, D. C., and had lived there for twenty-five years; that he had been employed during that time in the United States Patent office, nine years in the examining corps, nine years and a half as Assistant Examiner, about the same period as Principal Examiner, and for the remainder as an Examiner of Classification. That the examining corps was made up of a number of men whose duty it is to examine every application for a patent, to determine its novelty, utility, and patentability generally; that the Principal Examiner is the man who has the power to grant or refuse the patent, and he is assisted by five or six or more Assistant Examiners, who usually make the examination as to the question of novelty, submit it to him, who then passes judgment upon it; that the Examiner of Classification is in charge of that division of the examining corps which controls the classification of the useful arts, and that the division is now engaged in reclassifying the entire

field of useful arts. Witness said that there are a very large number of patents, both United States and foreign, and a large number of applications which contain disclosures of machines and processes which are used in the industrial arts; that there are over one million United States patents, and the arts interlace to a very large extent; that no one could make a search in the brief period which is required in the Patent Office, unless these were divided up; that the Examiner in charge of the classification controls the reclassification which is now going on. That the witness supervised the bureau of classification, and prior to that time served as Principal Examiner.

The witness further testified that he had made an additional study of the science of patent law, had attended a course of law at Georgetown University, and a course of patent law in Columbia University; that he was a licensed and practicing attorney in the District of Columbia; that he had written articles relating to patent law that were published in law books and text books; that he wrote the article of patent law in the American Encyclopedia of Law. That he was qualified to examine certified copies of applications for patents and the files and records of the United States Patent Office for the purpose of telling the status of pending applications on file with the United States Patent Office; that he was familiar with the manner of keeping the file system and with the routine or procedure which a patent takes when it is filed in the Patent Office until it is finally granted or rejected. That when the application is filed the papers are sent to the application

room; the chief draughtsman then reviews the drawings for technical errors, poor execution and the like; that the application room makes up the filing wrapper, applies a serial number, and sees that all the papers which are required to be filed by law are there; then the application papers and specifications are assembled and sent by the Chief of the application room to the Examiner whom he thinks should examine it, for examination; after it reaches the Examining Division, the files are placed either in pigeon holes together, or they are distributed on to the desk of the particular Assistant whose duty it is to search the particular portion of the art to which that application belongs, and they are taken up in accordance with the rules of procedure. The Assistant Examiner reads carefully the specifications in connection with the drawings, to see that everything is correct, all the letters are properly placed, and there are no mistakes, to see that the apparatus or method claimed is operative, see that it is useful; then he reads the claims and makes any objections, notes any objections he might find to them of any sort, and then makes his search. In the examining division all the patents relating to the particular art which that division deals with are classified and kept in cases, shoe boxes, they call them, and the Assistant Examiner, using his knowledge of the classification, makes an examination and tries to find all the prior patents which seem to him to anticipate, or those which come the nearest to anticipating the invention defined in any claim, and when he has made his examination, searched the domestic patents and foreign patents, and the literature, he then notes anything that he thinks anticipates a certain claim, and it is presented to the

Examiner for his judgment. The Examiner then passes upon it and states whether he thinks it should be allowed or rejected, and directs the Assistant, as a rule, to write a letter carrying out his judgment, and the letter is written to the applicant. That the letter informs the applicant he is cited to patents that have been issued prior to the date of his application. After the citation to the applicant, he has an opportunity to amend, he may modify his claim, or he may insist upon it as he first presented it. When he has done that the Examiner reconsiders, in view of the amendment, and proceeds as before, and that course is followed until the application for patent is either allowed or rejected. That there are three appeals allowed from his rulings, one to the Examiner in Chief, one to the Commissioner of Patents, and one from the Commissioner of Patents to the Court of Appeals of the District of Columbia. That in ascertaining whether or not a person owned a patent, and how many patents they owned, and how many applications they had pending, it would be necessary to examine the books of the Assignment Division; that the assignment records are records kept in the Patent Office which show any transfer of any interest in any patents of any invention which may have been recorded there by the parties interested. They consist of several sets of books. In the first place, when the assignment is received, it is entered in order of date, the receipt in one book, which identifies the matter by the letter which accompanies it; then there is an index kept of these books, both in the name of the assignor and in the name of the assignee.

The witness testified that he had made an examination of the assignment records for the purpose of ascertaining the patents and applications owned and standing in the name of, upon the records of the Patent Office, the United States Cashier Company; that he made the examination from January 1, 1909, to December 31, 1914. The District Attorney then read to the witness a description of the Change Computing Machine for department stores, etc., from the advertisement appearing in the Oregonian of October 29, 1911, and of the Automatic Bank Cashier, a change making, listing and adding machine, and of the Change Computing Currency Paying Machine, and of the Lightning Change Maker, and of the Adding Machine, and the witness testified, in response to questions, that the United States Cashier Company did not own a patent to an adding machine, nor did it at the time of the examination of the witness; that the United States Cashier Company did not have an application on file for an adding machine on October 29, 1911, nor did it have an application on file on that date for the Lightning Change Maker described; that a patent for the Lightning Change Maker was issued July 6, 1915, and the number of the patent was 1,145,700. That there was no application for a Change Computing Machine by the United States Cashier Company on October 29, 1911, and that the United States Cashier Company does not own a patent for any machine designed to do that work. That the United States Cashier Company did not own any patents to any machine which was designed to compute change for department stores and all classes of retail business, as described in the advertisement. That on the 29th of October, 1911, the United

States Cashier Company had no application on file for any machine that would do that work.

The Court took a recess and the next morning the witness continued his testimony, and testified that from the 1st day of January, 1909, until the 31st day of December, 1914, the United States Cashier Company never did own patents to any of the machines described in the advertisement about which he had been asked. Upon inquiry by defendants' counsel as to what machines were included in the answer, the District Attorney answered, the four to which he had specifically called attention, the Lightning Change Maker, the Computing Machine, the Adding Machine, and the Bilyeu Cashier, with the paying and listing attachment. And the witness continued that the patent which was issued on the 6th day of July, 1915, about which he had testified, as shown by the record, was assigned to the International Money Machine Company, and witness presumed it was issued to them, to the Intenrational Money Machine Company; that it had been assigned by the United States Cashier Company. That the patent issued July 6, 1915, No. 1,145,700, was based on application No. 728,853, filed October 31, 1912, by W. S. Overlin; it was assigned to the United States Cashier Company, and by the United States Cashier Company to the International Money Machine Company, and that the patent issued direct to the International Company, by virtue of the assignment; that except for the assignment it would have issued to the Cashier Company. And the District Attorney admitted that it was by virtue of the assignment of the

United States Cashier Company that the International Company got the patent.

The witness then, from the patent record, stated a list of all the applications that had been filed, either on behalf of the United States Cashier Company, or assigned to the United States Cashier Company, and all patents that had been either issued to the United States Cashier Company, or issued to anyone else and assigned to the United States Cashier Company, from the year 1908 to December 31, 1914. That there had been two patents either in favor of the United States Cashier Company, or issued to another and subsequently assigned to the United States Cashier Company. The first patent was the Potter patent, No. 886,307, and then the design patent of Bilyeu, No. 43,401. That the Potter patent was issued April 28, 1908, and the inventor was T. I. Potter, and was assigned through mesne assignments to the United States Cashier Company, recorded April 12, 1912. The witness produced a certified copy of the patent issued to Thomas I. Potter on the 28th day of April, 1908, and the file wrapper, and he described the file wrapper as the jacket in which all the papers with the applications are enclosed, except the drawings, and on which is the serial number of the application, and a place left blank upon which the patent number is placed after the application is issued as a patent. It has the name of the applicant, place of residence, date of filing of all parts of the application, and a space for the signature of the Examiner who examines the application, and for the signature of the agent of the Commissioner, and various data, etc.

There was then offered in evidence, and received, by the United States District Attorney a duly certified copy of letters patent 886,307, issued to Thomas I. Potter, April 28, 1908, marked Government's Exhibit 343. The number of the application was 368,135, and it was filed April 15, 1907, and was assigned, through mesne assignments, to the United States Cashier Company, and transferred by that Company to the International Money Machine Company. That the purpose of this machine was to deliver a predetermined number of coins, of a predetermined value, from a series of coin tubes. Witness then explained the operation of the machine, and testified that there six claims in that patent, and they were limited to the organization, including in every instance selector plate with the openings and the ejectors adapted to pass through the openings, which are in line with them, and to be stopped in movement by the solid portions not in line.

That the next patent was Design Patent No. 43,401. The patent issued December 31, 1912, Application No. 709,824, applicant, Thomas Bilyeu. The invention was for a design for the casing for coin handling machines. That was assigned to the United States Cashier Company, and assigned by that Company to the International Money Machine Company. That the scope of a design patent did not define any structure in terms, but reads "Ornamental design for casing for coin handling machines, as shown," etc.

The witness testified that there were other applications and other patents that were issued to others, like

Thomas Bilyeu, and when the assignment was made assigned direct to the International Money Machine Company; that there were four of them, that there were eighteen applications and patents together, that were either issued to Mr. Bilyeu or to Mr. Overlin and assigned, or other persons in the United States Cashier Company, and assigned to the International Company. Of these eighteen applications there had been six patents issued and the other twelve applications were pending; that there were four where title never went through the United States Cashier Company, but assignment was made to the International Money Machine Company.

One of these was Patent No. 1,114,574, dated October 20, 1914; another was Patent No. 985,136, issued February 28, 1911, assigned by Overlin to Bilyeu, and by Bilyeu to the International Money Machine Company; another was Application 555,552, filed April 14, 1910, by Thomas Bilyeu, W. S. Overlin and F. A. Gridley, assigned by Overlin and Gridley to Bilyeu, and later by Bilyeu to the International Money Machine Company. Another was Application 617,201, filed March 27, 1911, by Bilyeu and Overlin, assigned by Overlin to Bilyeu, and by Bilyeu to International Money Machine Company. The latter application has been allowed by the Examiner, but not yet patented. That the record of the Patent Office failed to disclose that the United States Cashier Company ever had any ownership in any of these patents.

Another one was Application 519,489, filed September 24, 1909, patented October 20, 1914. Application

filed originally September 24, 1909, and this application became forfeited after the first allowance, and was renewed January 30, 1912, and was passed to issue and was patented September 14, 1914, to Thomas Bilyeu. The title of that invention was Change Making Machine, which was changed afterwards to Coin-Delivering Machine, and was patented so. The purpose of that machine was to deliver a predetermined number of coins upon the depression of a key and the operation of a handle. The witness identified the machine, and testified that the patent covers what was called the Bilyeu Cashier. That the machine comprises a frame with a series of coin holding tubes in front of it, some ejectors, the coin tubes having openings for discharging coins from the lower portion, an ejector for each coin tube; a means for operating the ejector, advancing each ejector, a bank of keys at one side of the coin tubes, that is, at the end of the machine; connections from these keys to the several ejectors so as to move or swing them into engagement with their operating arms, and a means to actuate the shaft and operate arms so as to advance these ejectors which had been connected by the keys.

The witness was then asked the following question: "Now, you have said in your examination yesterday that when an application is filed in the Patent Office, and the Examiner has made his search and finds something in conflict, or apparently in conflict, that those claims are cited and notice given to the applicant that certain claims are cited against him. Now, can you give to the jury the number of the prior patents that were cited against this Bilyeu Cashier?" "A. Yes, I have a note of that.

Fifteen patents cited during the prosecution of this application." Witness further said that one of the citations was a patent issued to a man by the name of Lindeloff, Patent No. 619,321, dated February 14, 1899.

Thereupon the District Attorney asked the witness the following question: "Are you able to say from that examination, as an expert in the science of patent law, whether or not the Lindeloff patent dominates the Bilyeu Cashier?"

Whereupon counsel for the defendants said: "Now, your Honor, may I ask the witness a question?"

District Attorney: Yes.

Mr. Pipes: Was the patent issued by the Department to Mr. Bilyeu?

A. The Lindeloff patent?

Mr. Pipes: No, the one you are speaking about.

A. Yes, that was issued to Mr. Bilyeu.

Mr. Pipes: By the Department?

A. Yes."

Thereupon counsel for the defendants said: "Now, your Honor, we object to going into it, to show whether or not some prior patent they did cite, upon which the Department has issued a patent, if anything conflicts with that. If it were so, it wouldn't have anything to do with this case, and then the court and this jury can't try that out here, it seems to me. This is something that took place in the Patent Office. These defendants made their application."

And counsel for the defendants asked the witness this question: "The Department cites this previous machine, doesn't it?"

A. Yes.

Mr. Pipes: That was considered by the Patent Department, and upon that patent was issued, and that is the only question we have here—was patent issued?"

Whereupon the United States District Attorney said to the Court: "It seems to me we have a much broader question than that to be submitted to the jury, in this: Witness has detailed that when an application for a patent is made in the Patent Office, a search is made by the Examiner, and if there are then patents which had been issued prior to that time which are apparently in conflict, those are cited, and the applicant is given notice and knowledge of them. Now, the fact that a patent may be issued to Mr. Bilyeu does not mean that he has any more right than he had before. It means that he has but one right, and that is to exclude others from making that particular thing in that particular way, but it does not mean that there is no one else that has a patent that would absolutely stop him from making that article. Now, when the Lindeloff patent was cited, and this applicant given notice of it, his attention was directly called to the Lindeloff patent, and to the fact, as we will show, that even if patent would issue that the patent of Lindeloff would absolutely dominate and control his patent, and that being so, if they then proceed after that time to sell stock in their company, with the representation that they were going to manufacture and sell these machines, why, then they were

committing a fraud against the general public, and against all people who should but that stock. That is the charge in the indictment, that these people were not engaged in the manufacture and sale of these machines, but that their entire business was to sell and dispose of their capital stock. Now, we contend that if we can show that it was brought to the attention of Mr. Bilyeu by this citation in the Patent Office that they couldn't market and sell this invention, even in the event that patent should issue, then the sale of this corporate stock to the public was wrongful, and it is our contention that the procuring of these patents in the limited way in which they were procured, limited to the specific mechanism, that they are absolutely dominated and controlled by the prior patent at that time, show they had no intention whatever to ever engage in the manufacture or sale of these machines. That is our contention. And we intend to continue, and show by this witness, that as to each of these applications that patents were cited against these applications as they were filed, and that these patents as cited, particularly the Lindeloff patent, showed that it completely dominated the patent which they were asking for. Now, that is the contention we have, to prove that they never intended to manufacture or sell these machines."

The witness then, pending the decision upon the objection, testified in response to questions by Mr. Atkins that the Lindeloff patent expired the next year, and upon this expiration would have no effect upon the Bilyeu machine, as far as dominating it was concerned, as a dominating patent.

The Court then ruled upon the objection as follows: "The controlling question in this case is one of good faith, and the Government charges that these people were not engaged in a legitimate enterprise, but were using it for the purpose of defrauding the public. Now then, if they had these patents, or pretended to have them, knowing at the time that they were not what they were representing them to be, and based upon that, insisted and represented that their stock was of a certain value, and was increasing in value all the time, and that they proposed to go ahead and manufacture these machines, it would come within the terms of this indictment, and would be a question that I think the jury have a right to consider, in determining whether they were acting in good faith in this transaction. If they were, then of course that is the end of the case. If not, and they come within the provisions of the indictment, and sustained by the testimony, they would be guilty of the charge against them. Therefore, I think the Government has the right to show that, notwithstanding these people had patents, if they knew at the time that their patents were invalid, and would not permit them to manufacture these machines, it is a circumstance going to determine whether they were acting in good faith, or not. It does not go to the validity of the patents. We are not trying that question. It goes to the good faith of the defendants, and for that reason I think the testimony is competent."

And the Court overruled the objection, to which (D) ruling the defendants, by their counsel, excepted then and there, and the Court allowed the exhibition.

Thereupon the witness, under said ruling, proceeded to testify, and, in response to questions, testified that the Lindeloff patent was issued February 14, 1899, which was cited against the Bilyeu patent. The witness said he had read the claims of the Lindeloff patent in connection with the machine shown and described in the Bilyeu patent, No. 1,114,574, and in his judgment the construction shown and described was within claims 1 and 2 of the Lindeloff patent.

The District Attorney then asked the witness the following question: "What would you say as a patent expert as to whether or not the claims numbered 1 and 2 of the Lindeloff as allowed, dominate and control these claims in the Bilyeu Cashier?"

And the witness answered: "These claims as allowed dominate the construction shown in the Bilyeu Cashier."

The witness then testified as to Patent No. 885,136, patented February 28, 1911, Application No. 522,240, filed by Thomas Bilyeu and William S. Overlin, and that the assignment record shows that this patent was assigned to Bilyeu, and by Bilyeu assigned to the International Money Machine Company. That there was no assignment to the United States Cashier Company in that record. That the purpose of this machine is the same as that of the patent to Bilyeu sole patent to Bilyeu, No. 1,114,574; that it seems to be a modification in detail of the patent first spoken of; that there was a change made in the character of the ejector, in this machine the entire ejector was moved laterally, to connect

it with the ejector operating means, while in the other machines the detail of the operation, selector bar and their connection to the ejectors were different. In this particular machine the keys were connected by bell cranks, and the bell cranks were connected to selector bars. The selector actuated bales which were hinged at their lower side, and their upper end connected to ejector bars, and served, when the selector bars were moved, to move the ejector bars into engagement with the operating means. Witness said he thought the differences were details of design to improve upon the machine as originally shown. That there was no claim for printing mechanism in that patent. The witness testified that the Lindeloff patent was cited against that application. That as an expert, in his judgment, the claims of the Lindeloff patent dominated this patent in the same way that they did the patent previously spoken of, the original patent.

Thereupon the following questions and answers occurred:

“Counsel for defendants: May I ask a question? When you speak about citing, do you refer to the patent? Your office refers to that previous patent?”

A. Yes.

Q. As a possible dominating feature?

A. Why, generally they make a positive rejection in view of that as meeting it, as anticipating the claim.

Q. Yes, they reject the patent?

A. They reject the claim to which that patent applies.

Q. Now, this patent you have testified about, it was issued and not rejected on that account?

A. Well, in the prosecution of an application through the Patent Office, the Solicitor and Examiner give information back and forth, until they finally got exactly what is thought to be patentable by the Patent Office.

Q. What I am getting at, when you do that in the office, do you deliver an opinion, a written opinion, or otherwise?

A. Yes.

Q. To the applicant, that he is not entitled to a patent, because there has been another patent prior to that already issued?

A. Yes, they make what they call a rejection, a refusal to patent.

Q. But, when you don't reject it, but issue a patent to the applicant, do you tell him that fact that there is a prior infringement, this Lindeloff patent?

A. No more than by simply citing the art, citing the patent.

Q. You don't give an opinion?

A. We don't express any opinion regarding the infringement.

Q. And you didn't in this case, when that patent was issued, express the opinion that you now express?

A. No, the statute regarding—

Q. Well, I am asking that question: Did you express—?

A. No, sir.

Q. —to Mr. Bilyeu what you are now saying about that patent?

A. Not as dominating, simply anticipating. That is the only question at issue there.

Q. That is a matter between the officers and the Department. I think with that explanation of the witness we are entitled to have the evidence stricken out.

Mr. Reames: I will clear it up. Now, the patent is cited, for instance the Lindehoff patent is cited, so notice is given to the applicant that the Lindehoff patent has been cited against his application.

A. A letter of rejection is written, in which that patent is identified, and the applicant is told that his claim is rejected in view of that patent, in anticipation.

Mr. Pipes: Now, when it is not rejected, then what?

A. Well, when it is not rejected, if it was not to be rejected on that patent, that patent would not be cited except in a friendly way, perhaps, to show what the prior art was.

Mr. Pipes: I would like to clear that up. I may be out on it.

Mr. Reames: Yes.

Mr. Pipes: This patent, this first patent you spoke about, was in fact issued to Mr. Bilyeu?

A. Yes.

Mr. Pipes: You now say that that patent is affected by the domination of a previous one?

A. I believe I said in my judgment Claims 1 and 2 of the Lindeloff cover the construction disclosed by the Bilyeu machine.

Mr. Pipes: That is your opinion now?

A. Yes.

Mr. Pipes: After examination?

A. Yes.

Mr. Pipes: A careful examination?

A. Yes.

Mr. Pipes: Without reference to this case?

A. Yes.

Mr. Pipes: At that time did you express to Mr. Bilyeu that opinion which you now express about the dominating control of his patent that was issued to him?

A. It may be that you are under a misapprehension, too, here. I didn't examine that application.

Mr. Pipes: You or anybody?

A. Nobody in the Patent Office is required to give any opinion regarding infringement.

Mr. Pipes: And it didn't in this case?

A. It didn't.

Mr. Pipes: I think I am entitled to have that out, for it didn't go to Mr. Bilyeu.

The Court: I understand they notified him of this prior patent.

Mr. Pipes: They didn't notify him of the witness' opinion as an expert, because it was not their duty to give him that information.

The Court: That is clear, but they did notify him of the patent, of the prior patent.

Mr. Pipes: Yes, they cited the patent.

The Court: And advised him of that, so he knew there was such a patent, and he took his own chances with reference to disposition.

Mr. Pipes: I suppose, for his information about that, but he didn't have the benefit of this witness' opinion that the jury has.

The Court: No, goes to the question of his good faith.

Mr. Reames: We will supplement it later by introducing duly certified copy of the record, showing that at this time Mr. Thomas Bilyeu was regularly and duly admitted to practice as an attorney before the Patent Office.

Mr. Pipes: I would like the record to show my motion to strike out that testimony, in view of the present testimony.

The Court: The record will show it. It will be overruled."

Thereupon the counsel for the defendants excepted to the said ruling, and the exception was allowed.

The witness then testified that there were thirteen patents cited in the Bilyeu patent, issued prior to that time, including the Lindeloff.

The witness then testified about Application 555,552, filed April 14, 1910, and gave the history of it; it was filed by Thomas Bilyeu, W. S. Overlin and F. A. Gridley, and still pending. This was assigned by Overlin and Gridley to Bilyeu, and finally to the International Money Machine Company, no assignment to the United States Cashier Company. The purpose of the invention was to cover another machine of the Bilyeu Cashier type, and was a modification or further improvement. The principal part of the improvement in this machine, as witness understood it, relates to the charac-

ter of the operating mechanism at one end of the machine. Instead of having an oscillating lever, as in other cases, or handle here, the lever made a complete rotation, and was adapted by its particular construction to operate the type of printing and operating mechanism which is shown in this case, but not claimed. There were also other improvements or changes in the connection of the selector bars which were operated by the keys to select the particular ejectors and move them into position to be operated to eject the coins. This was the patent that was at one time abandoned and revived by order of the Commissioner of Patents. There were ten patents cited against that.

The witness then took up Application No. 617,201, filed by Thomas Bilyeu and W. S. Overlin, on March 27, 1911. This was prosecuted to an allowance, forfeited by failure to pay the final fee, renewed, receiving as renewal number No. 30,673, and was again allowed on June 1, 1915, but has not yet been patented. There was an assignment of this case to the International Money Machine Company by the applicants, none to the United States Cashier Company. The purpose of this invention was to print a record of the amount of money delivered by the machine. There was at the rear of the keyboard a mechanism which was fed, which was adapted to feed a strip of paper, and there was a printing mechanism comprising a number of printing bars, equal in number to the number of rows of keys, so the printing bar had on it nine or ten numbers. On depression of any key for the selection of any particular coin or number of coins, there was a mechanism which

would throw up the printing devices, and let them drop down, the key pressing over a lever, which engaged in one of several stops, which are arranged on each type bar, so as to stop the fall of the type bar, so as to bring opposite the paper and in printing position the particular numeral which corresponds to the particular key depressed, so when the machine was operated to deliver any certain value of coins, the value of these coins was printed upon the slip by that operation. That there were eleven patents cited against this patent.

In application 658,434, filed by W. S. Overlin, assigned to the United States Cashier Company, and by mesne assignments to the International Money Machine Company of Terre Haute, Indiana, the filing was November 3, 1911. The title was a Machine for Handling Paper Currency. No patent had been granted. The purpose of this invention was to deliver bills, paper currency. The witness then described the machine as comprising one or more reels or drums, upon which the currency was wound or stored. On the drum was wound a strip of tape, and in storing the currency on the drum it was inserted between the tape and whatever came beneath the tape, the drum itself, or the next layer of tape. The drum had a spring inside of it, and there was a locking mechanism, pawl and ratchet mechanism, which by pressure of a key could be released so the spring would wind that drum up. The drum could be filled with bills properly spaced for delivery. After that was filled the mechanism could be operated against the tension spring in reverse direction, by pawl and ratchet mechanism; it was connected

to keys and an operating crank in a way very similar to the coin discharging machines which have been described. There were nine patents cited against this patent. One was a patent that had been issued to a man by the name of Cook. The Cook patent was No. 807,724, dated December 19, 1905. In the witness' judgment Claim 63 of the Cook patent includes the drum structure disclosed in this application, and dominates it.

Then there was taken up Application No. 702,164, filed June 7, 1912, the Bank Cashier. Counsel for defendant asked the following question: "If you are going to prove we have patent to it, I have no objection.

Mr. Reames: I may prove that.

Mr. Pipes: You can't prove anything else with my consent.

Whereupon the District Attorney said: "Now, if the Court please, we are at this point in the record, and I promised Judge Pipes I would call his attention when I came to the machine known as the Bank Cashier. It is my purpose to prove as a part of our case the complete patented protection that the defendants actually had, to prove what they had, and what they had upon certain specific dates as we go through; and now I have come to that machine known as the Bank Cashier, and as a part of that proof, I desire to show to the jury among all the patents and applications that are there pending or filed, the exact status of that application, what it consists of; the main purpose of it being to

show the exact assets of the company upon which they were selling stock."

Counsel for defendant then said: "Now, I don't understand counsel said he was going to dispute that we had a patent.

Mr. Reames: I am going to show the exact state of the record, and that will speak for itself.

Mr. Pipes: I think we have a right to ask counsel to speak before he puts the record in as to whether he intends to controvert that we have a patent on that machine.

Mr. Reames: Why, the record will show, if the witness is permitted to answer, that application is pending, patent not issued.

Mr. Pipes: On this particular one?

Mr. Reames: On this particular one, the Bank Cashier.

Mr. Pipes: Oh, we are in confusion about the name.

Mr. Reames: I think that has been the trouble all the way through. The machine I call the Bank Cashier is the machine right here.

Mr. Pipes: I will try to settle this controversy. You have drawn this indictment, and in this indictment you don't deny that we had a patent on an affair that is called in the indictment the Bank Cashier. Isn't that right?

Mr. Reames: No, I don't think that is correct. I admit you have a patent to the Bilyeu Cashier, but I deny that you have a patent to the Bank Cashier."

Thereupon counsel for the defendants read the indictment, where it recited that the defendants pretended and promised that the said corporation, namely, the United States Cashier Company, owned the patents to a certain change computing machine, a certain bank cashier machine, a certain lightning change maker, a certain currency paying machine, and a certain new style adding machine.

Whereupon Mr. Reames said: "I will admit there is one specific negative of that in the indictment that does not include the Bank Cashier. That was inadvertently left out of the indictment.

Mr. Pipes: I don't think that is right to say. I don't care whether inadvertently left out. It is left out.

Mr. Reames: It is left out. My fault.

Mr. Pipes: That refers and names it the Bank Cashier machine.

Mr. Reames: The Bank Cashier. But the indictment does charge that these people,—it is a part of the conspiracy that they would falsely and fraudulently represent, pretend and promise that they were the owners of the patents to these machines."

Whereupon counsel for the defendant said: "Now, that brings up a question, a good clean-cut question for your Honor to decide, whether or not it is sufficient in an indictment, any more than it is in a suit in equity, to charge a representation as being false. If I understand the rule of pleadings applicable to civil as well as criminal cases, when you allege a false and fraudulent representation, you haven't gone far enough by apply-

ing to it that epitaph of fraud vituperative. What you have to do, as I understand, in a civil or a criminal case, when you are depending upon false representations, is to state in what particular it is false; a false representation may not be fraudulent, and the mere designation of it by that adjective is not sufficient."

Thereupon Mr. Reames said: "I am willing to concede, for the purpose of this argument, although I don't believe it is the law, but for the purpose of this argument just concede that counsel's position is correct, nevertheless there is another reason why I am entitled to prove the exact status of the patent record, and that is this: It is charged in the indictment that these people were to represent and assure the public that the stock of this corporation was of great commercial value, and it is alleged in the indictment, whereas in truth and in fact, the shares of stock were perfectly worthless and of no value whatsoever. Now, I have proven certain allegations were made, that they were going to pay dividends, that the stock was of great value. Not only that, but I have proved that this stock was sold for three times par, \$30 a share, under representations that dividends would be paid upon an investment of that magnitude. Now, I desire to prove that this stock was of very little value, and practically worthless, and for the purpose of that I desire to prove just exactly what this corporation owned at the time that it was selling this stock. For that purpose alone, I believe I am entitled to prove just what they had."

And after further argument by counsel for defendant upon the question, the Court said: "I think there

is a reason why this testimony is competent, and that is, it has been shown in evidence that this company advertised at a certain time that they had patents to these certain named machines, they owned the patents to certain named machines. The evidence up to this time shows that they didn't have patents to some of these machines they were then advertising. Now, that was either an intentional misstatement, or it was an error of judgment and misinformation, and that becomes an important question, I suppose; it will be before this trial is through, for some triers of fact to determine in arriving at that question. I think the Government is entitled, in a case of this kind, where it depends on circumstances, to put in evidence other acts of a similar kind, transactions of a similar kind that happened at the same time. And when they advertised these machines the Government alleges they didn't have, they advertised another machine they didn't have at the same time, and it is for the Government to show the purpose and intent for which they advertised the machine, and for that reason I think it is competent. But I don't think for the purpose of showing that was one of the means by which the defendants intended to carry out that conspiracy. I think the Government is required in an indictment of this kind to negative those allegations, but it simply goes to the intent or purpose of the defendant."

Counsel for defendant said: "I will have the record show that, the part of it I am sure about is that the indictment, in effect and legal substance, alleges by admitting that that machine was patented, and that

no issue is raised between the indictment and the plea of not guilty on that question."

The Court said: "Go ahead with the testimony."

(F) And the Court overruled the objection, to which an exception was taken and allowed.

The next application taken up was Application 702,164, filed by Nelson White, W. S. Overlin and F. A. Bullington, filed June 7, 1912. The title of the invention was a Mechanical Cashier, Adding and Listing Machine; and that the patent had not yet been granted. It was assigned to the United States Cashier Company, and afterwards to the International Money Machine Company by the Cashier Company. The machine, as a whole, comprises an adding machine, typical adding machine with printing attachment, to print the amount separately and to take totals. It shows the operating handle for the machine, a typical adding machine. It shows a coin delivering mechanism at one side of the adding machine, the side opposite the handle; a series of coin tubes and ejector for each coin tube, and connections, whereby the operation of the adding machine keys may select the particular coins to be ejected, and the operation of the handle of the adding machine may bring about the printing, totalizing and ejection of coins. One important thing in this machine is the means whereby the adding and coin paying mechanism may be disconnected, so the adding machine may operate independently of the coin delivering machine mechanism, they may be used together or separately. The file wrapper shows that this application was placed in inter-

ference by one Nelson C. Oviatt, on the 29th of September, 1914. Twenty-four American patents and two German and two English patents have been cited by the examiners against that machine. One hundred and forty-seven claims were shown in the application. Of these claims three were made counts in the issue of interference, and disregarding these leaves one hundred forty-four. Of these twenty have been allowed and one hundred twenty-four rejected.

The next is application No. 709,824, filed July 16, 1912, which was a design patent. It was an application filed by Thomas Bilyeu, assigned to the United States Cashier Company, patented December 31, 1912. It was for the ornamental appearance of the casing of the coin delivery machine.

The next application was No. 710,512, filed by W. S. Overlin, for Money Paying, Changing and Listing Machine, filed July 19, 1912. It is the machine witness called the Computing Machine. It is the same machine which was identified by the witness Overlin upon the stand as the Computing Machine which he had built. No patent had yet been granted. That was assigned by Overlin to The United States Cashier Company, and by the Cashier Company to the International Money Machine Company. The purpose of the invention was to deliver coins of a value equal to the difference between an amount tendered and an amount to be deducted from it. The purpose was to provide a machine whereby, if it were used in a store as illustrated, and a ten dollar purchase should be made, and a twenty dollar gold piece

tendered in payment of that purchase, that by the depression of the proper keys, the exact amount of change, ten dollars, would be paid. There were twenty-one United States patents cited against that machine, and three English patents and two German patents. There were two patents to a man named Osborne cited against the patent, Osborne patent No. 864,185, dated August 27, 1907, and No. 982,853, dated January 31, 1911. The witness said he had examined the Osborne patent carefully; that it had been issued to the National Cash Register Company, Dayton, Ohio, as the assignee, from Osborne, the inventor. The Osborne patent is Government's exhibit "308." There were one hundred fifteen claims in the Osborne patent.

The District Attorney then asked the witness the following question: "Now, I wish you would make a comparison and show to the jury, I would like to have you do it carefully and in detail, whether or not this Osborne patent dominates and controls this change computing machine, and if it does so, in what manner it does it, and what claims there are in the Osborne patent that do it."

And the witness said that he found several which in his judgment included the construction of the machine shown here as the computing machine. The witness noted Claim 18 of the Osborne patent and read it: "Claim 18. In a change maker, the combination with a movable element, of means for actuating the same, according to the amount of the purchase, means for further actuating the same according to the amount re-

ceived to bring it to a position representing the difference between the two amounts, and a money changer controlled by said movable element." Claim 47 of the Osborne patent was as follows: "In a change making machine, the combination with a change making and ejecting mechanism, comprising a series of receptacles for different denominational amounts, means for controlling said mechanism selectively according to the amount of purchase and to the amount tendered in payment, and means for selectively actuating said ejecting mechanism to eject from the proper receptacle the difference between the two amounts." Claim 100 was: "In a change making cash register, the combination with two sets of manipulative devices representing desired amounts, of different computing mechanism controlled by both sets and automatically adjusted to the difference in amounts exhibited by the sets of manipulative devices." Claim 101 was: "In a change making cash register, the combination with two sets of manipulative devices, adjustable in correspondence with desired amounts, of subtracting mechanism, and operating means for automatically adjusting said mechanism to positions representing the difference between amounts exhibited by the sets of manipulative devices." Claim 102 was: "In a change making cash register, the combination with a change indicator, of two sets of manipulative devices, representing amounts and an operating mechanism for moving said indicator, differentially, to position to exhibit the difference between the amounts exhibited on said sets of manipulative devices." And the witness explained regarding that claim that the claim uses the words "a change indicator." In the Osborne

patent the change indicator has designations on it, and in the application under consideration we have the same mechanical part, but without designations on it, making the question whether that claim actually does infringe.

And the District Attorney asked the witness the following question: "From the other claims of the Osborne patent, what is your opinion in the science of patent law, whether those claims in your judgment are broad and basic?"

The witness answered: "In my judgment they are fundamental to this art."

"Q. What do you mean by fundamental?

A. That applicant alleged in his specifications that he was the first, as he believed, to construct a machine which would deliver change, the difference between the amount tendered and the amount purchased, for example; the Patent Office never denied that, and has never cited any patents prior to this which showed a mechanism for automatically selecting change, as it were, owing to positioning a bar differentially by two sets of mechanisms, and this patent seems to me to cover that very broadly.

Q. In other words, these claims you have read from the Osborne patent are, in your opinion, both broad and basic. What would you say as to whether or not they afford the owner of that patent basic protection?

A. In my judgment it would be extremely difficult for any one evade that patent without—to evade the patent. I think the only way he could escape it would be to invalidate it.

Q. How, can you tell from the study you have made of this Osborne patent, whether or not it was a carefully considered patent in the Patent Office, and what procedure it took in going through?"

And the witness answered that the patent was pending for sixteen years, and was finally passed upon and patent issued on August 27, 1907, and the life of the patent would be seventeen years from the date of that issue.

The foregoing testimony was taken and received over the objection of the defendants that it was not competent on the question of good faith, or for (G) any other purpose, to prove that the patents or applications involved could be affected by citations of a prior patent, and an exception was allowed.

The next application was No. 717,977, which was for chute gate for coin delivering machine, filed August 13, 1912, patented July 6, 1915, patent No. 1,145,727. This was a patent for a chute or spout for delivering the coin.

The next application was No. 728,853, filed by W. S. Overlin for money deliveries for street cars, filed complete October 31, 1912, patented July 6, 1915, patent No. 1,145,700. That machine is known as the Lightning Change Maker. This patent was assigned by Overlin to the United States Cashier Company, and by them to the International Money Machine Company. This machine differs primarily from the Bilyeu Cashier in that there is no operating handle here for operating

and discharging. The selecting keys, in the early part of their movement, select and move into position the ejector bars, and then by a further movement operate the ejector shaft so as to throw out the coins. In this machine, therefore, by the pressing of the proper keys, the proper amount of coin can be delivered. The machine, the witness said, was rather strictly limited to the specific mechanism employed. It was not new, as shown by patents cited during the prosecution of the case, to select and eject coin by depression of selector key, leaving out the operating handle. That seems to have been somewhat common. There were also one or two useful but minor improvements in the machine. The witness identified a machine on the table as the Lightning Change Maker, and said that the difference between that machine and other machines is that the selection is made by the depression of a key and the ejection made in the same way without any handle to operate it at all.

“Q. Now, explain to the jury fully whether or not at the time that application was filed, that art was new, or whether it was old, and tell the jury fully about that.

A. This is an old art. This application was filed October 31, 1912. Now, there is in the Patent Office a classification or class, designated Class 133, Coin Handling, which is made up entirely of mechanisms for handling coin, and it is in that art that this machine, the application for patent for this machine is classified. Now, there are several sub-classes in that class, directed to the mere discharge of coins singly, or in selective groups, as also there is in that class a sub-class devoted to the discharge of change, as in so-called computing

machines. I mean the difference, involving a subtracting operations, and that class has been in existence about, my recollection is about 17 years. Prior to the formation of it into a distinct class, it was a part of what was called measuring instruments.

Now, would the same mechanism, and in the same way, infringe the Lindeloff patents as it would in the other machines which you have described?

A. Not to the extent. My reading of the Lindeloff patent leads me to believe that the first claim of Lindeloff includes the construction of this machine.

Q. That is the patent that is practically expired at this time—will expire when?

A. In 1916."

And the witness said that the patent to this machine was to issue to the International Money Machine Company, and was issued July 16, 1915, in the natural course.

(H) The above testimony was taken subject to the same objection, and the same exception.

The next application was No. 729,093, filed by Robert L. Bailey, for a Change Making and Computing Machine, filed November 1, 1912. It was assigned by Bailey to the United States Cashier Company, and by the Cashier Company to the International Money Machine Company. The application is still pending, no patent having been granted. The purpose of the invention is to deliver the difference between an amount tendered and an amount to be deducted therefrom, sim-

ilar in purpose, same in purpose as that of the Overlin Computing Machine which has been referred to hitherto. This application does not show the development of the idea carried to anything like the extent as in the Overlin machine. It hasn't the range of action of the Overlin machine, has a different mechanism, and, as far as the application shows, it had only two tiers of keys, and therefore had not been worked out to the same extent as the other one had been.

And the witness was asked the following question: "Now what have you to say as to your opinion in regard to this patent being dominated by the Osborne patent, whether or not this is the same as the other computing machine, and to the same degree?"

A. The machine shown in this application is within the claims of the Osborne patent which were formerly referred to.

Q. And dominated by it?

A. And cominated by it."

The above testimony was taken over the same objection and exception as the similar testimony on the infringement of prior patents.

Witness testified that there was a patent, No. 737,958, issued September 1, 1903, to one Pfeifer, which was cited against this patent. The witness said he had examined the Pfeifer patent, and in response to questions witness stated that the Pfeifer patent was issued to Mast, Foos & Company of Springfield, Ohio, and that eighteen claims of that patent, in witness' judgment, in-

cluded the construction of the Bailey machine as already shown.

(J) This testimony was taken over the same objection and exception.

The next application was 729,704, for Currency Paying and Computing Machine, filed by William S. Overlin, November 5, 1912, for a Mechanical Cashier, that being the official title. This was assigned to the United States Cashier Company, and by the Cashier Company to the International Money Machine Company, and no patent had yet been granted. This was an application for a machine designed to deliver either paper currency or coin, at the wish of the operator, one of those, a paper currency delivery machine having been referred to hitherto. That was a machine in which the paper currency was wound on a drum, between a tape and a drum. This one was designed to retain the currency in a flat condition, in piles, and to remove the top bill of any selected pile according to the selection made in the operation of the machine. The coin ejecting mechanism was substantially that of the Bilyeu type, that was applied to this machine, and it was combined in a certain definite relationship with the paper currency handling or ejecting mechanism. The coin ejectors were brought into engagement with their operating means by the depression of a key and movement of the handle, this causing the ejectment of these coins. Witness testified there was a connection from the crank handle to the means for operating for removing the currency from the top of the pile, and these currency re-

movals comprised arms hollow, with openings in them, and they were hinged to arms which projected upward from the machine; some device for creating suction through these arms was provided which made, when in place, an exhaust tank, or fan or pump, or anything of the sort which would cause a current of air to pass through these arms. There was a mechanism which could be connected to, or disconnected from the ejector operating mechanism, so that the bills need not be delivered in the operation of the machine, only the coin, and also, if you wished to deliver bills you could deliver bills without delivering any coin. The coin ejectors were not thrown out of operation in this machine, but fingers were projected to underneath the coin stacks, which lifted the coins as the ejectors came forward so that none would be ejected, only bills would be ejected. And the witness testified that that was new, but not in a broad sense, because there were in the art at that time money handling machines adapted to deliver both coin and currency, but that combination was apparently quite new, with the exception that they could not make claim to any broad idea of delivering both kinds, or either one of them. There were twenty-one patents, three of which were German, cited against that application.

(K) This testimony was taken over the same objection and exception.

The next application was No. 742,958, which was an application by Thomas Bilyeu, filed January 18, 1913, title, Paper Money Deliveries. A patent had not yet been granted. It was assigned to the United States Cashier Company, and by the Cashier Company to the

International Money Machine Company. The purpose of this was to deliver paper money. Witness described this machine, which is similar to the description of a similar machine before given, and said that the scope of the invention was rather broadly new. And the witness testified that in his opinion, and from his knowledge of the science of the law of patents, that application for a currency paper, filed January 18, 1913, by Mr. Bilyeu, patent not yet granted, contains rather broad claims that have already been allowed.

(L) This evidence was taken over the same objection and exception.

The next application was No. 755,817, filed by Nelson White, March 20, 1913, for Adding and Listing Machine, no patent yet issued. This was assigned to the United States Cashier Company, and by it to the International Money Machine Company. This was an improvement in adding machine, and did not, of course, claim to be broadly new, because the adding machine art is pretty old and the basic patents have expired. The public is free to make adding machines of certain types. This only pretended to be an improvement of certain details. There were twelve claims allowed, fourteen objected to as not being clear enough to be understood so that the Examiner could take definite action upon them, and there were twenty-two rejected. There was an amendment filed since that time on this application, but not yet acted on. This amendment cancelled thirty-five claims, amended two, and asked for reconsideration. The amendment was dated May 25, 1915, and its standing

now is that it is awaiting action on the part of the Patent Office. Against this application there were ten patents cited, one English, one German, and the others United States. The patents cited were Burroughs and Pike.

(M) This evidence was taken over the same objection and exception.

The next application was No. 767,335, filed by Thomas Bilyeu on May 13, 1913, for Paper Currency Paying Machine. No patent yet allowed. This was assigned to the United States Cashier Company, and by them to the International Money Machine Company. The purpose of this was to deliver paper currency in a flat condition, as in the other Bilyeu invention which we have referred to, and was a further advance in that particular art. The witness further described that machine, and said that the claims allowed in that application were, he considered, broad. There were eight prior patents cited against that application during the consideration of that patent.

(N) This evidence was taken over the same objection and exception.

The next application was No. 836,771, and was an application filed by Nelson White, May 6, 1914, for Ribbon Feeding Machine. This was assigned to the United States Cashier Company, and by the United States Cashier Company to the International Money Machine Company. No patent has been granted on this application, the last action having been a rejection, and no amendment yet entered in the files. This was an im-

proved mechanism for feeding an inking ribbon used in adding machines, typewriters, and other machines, and the witness described the invention. There were ten claims in the application, of which three specific ones had been allowed, and the other seven rejected. There were seven prior patents cited against this application.

(O) This evidence was taken over the same objection and exception.

The next application was No. 838,065, filed by Nelson White, May 12, 1914, for a Coin Delivery Machine. No patent yet issued on the application. It was assigned to the United States Cashier Company, and by them to the International Money Machine Company. This was a machine designed for the same purpose as the so-called Lightning Change Maker. It was a complete reorganization, different organization. It was broadly to select and discharge coins by the depression of a key. The keys in this machine were stretched across the front of the machine, instead of being on the side, and it had a locking device which was adapted to lock the keys so that nobody could operate them, and at the same time lock a cover on the front of the machine so that nobody could get to the coin chutes, a key performing the locking operation, that is, a key which could be carried in the pocket, formed the locking operation for both the discharge keys and the front of the machine. There were originally twenty-five claims in this application, of which three had been allowed and the others rejected. One allowed claim relates to the locking mechanism which was described, and the other two affected the closure of the coin chute, which witness had not referred

to in his description of the machine. That the file wrapper showed there had been an amendment made of these claims, filed June 7, 1915, and no action yet taken on the part of the Patent Office. There had been eleven prior patents cited by the Patent Office in relation to this application.

(P) This evidence was taken over the same objection and exception.

And the District Attorney asked the following question:

“Q. Now, in your testimony today you have frequently been asked as to how many claims were cited against certain applications, that were pending for patent. Can you tell the jury something about the classification of those patents that have been cited, the broad classification in the Patent Office, and to what general scope of the art they relate?”

And the witness answered: “Yes,” and proceeded to testify that he made a note of the different classes which had been referred to, that the principal class is Class 133, entitled Coin Handling, and that has been in existence some sixteen years, and was formerly part of another class. There were fifteen sub-classes and this Class 133 is divided and segregated into many sub-classes, into fifteen sub-divisions.

The Government then offered in evidence, and it was received, a duly certified copy of Patent 1,114,574, granted to Thomas Bilyeu, October 20, 1914, for improvement in Coin Handling Machines. This was

marked Government's exhibit "344." Also a duly certified copy of Patent No. 985,136, granted February 28, 1911, to Thomas Bilyeu and W. S. Overlin, improvement in Coin Deliveries, Government's exhibit "345." Also a duly certified copy of pending application of Bilyeu, Overlin and Gridley, filed April 14, 1910, No. 555,552, for improvement in Coin Delivering Machines.

Counsel for defendants asked Mr. Reames: "Does that show in what condition the pendency is in, as to whether claims have been allowed?"

Mr. Reames answered: "Up to the date of the certificate, it did." And he said the date of the certificate was January 19, 1915. And the District Attorney said that while his certified copies of these applications that are pending, some of them, are not certified to of very recent date, but in those instances they had the original file wrappers showing what was done, if anything, since the date of the certificate. This was marked Government's exhibit "346." And counsel for the defendants agreed that the file wrappers should be returned to the Department, but that the information should be copied into the record of any action taken since the certified copies were made, and that was agreed to.

The Government offered in evidence, and it was received, certified copy of pending application of Thomas Bilyeu and W. S. Overlin, filed March 27, 1911, Serial No. 617,201, improvement in Record Mechanism for Coin Delivery Machines. This was marked Government's exhibit "347."

The Government offered, and it was received in evidence, a duly certified copy of pending application of W. S. Overlin, filed November 3, 1911, Serial No. 658,434, improvement in Machines for Handling Paper Currency. This was marked Government's exhibit "348."

The Government offered, and it was received in evidence, a duly certified copy of pending application of White, Overlin, Bullington, filed June 7, 1912, Serial No. 702,164, improvement in Mechanical Cashier, Adding and Listing Machines. Government's exhibit "349."

The Government offered, and it was received in evidence, a duly certified copy of pending application of William S. Overlin, filed July 17, 1912, Serial No. 710,512, improvement in Money Paying, Changing and Listing Machines. Government's exhibit "350."

The Government offered, and it was received in evidence, a duly certified copy of pending application of Nelson White, filed August 30, 1912, Serial No. 717,977, improvement in Chute Gates for Coin Delivery Machines. Government's exhibit "351."

The Government offered in evidence, and it was received, a duly certified copy of pending application of Robert L. Bailey, filed November 1, 1912, Serial No. 729,093, improvement in Change Making and Computing Machines. Government's exhibit "352."

There was offered and received in evidence a duly certified copy of pending application of William S. Overlin, filed November 5, 1912, No. 729,704, improve-

ment in Mechanical Cashiers. Government's exhibit "353."

There was offered and received in evidence a duly certified copy of pending application of Thomas Bilyeu, filed January 18, 1913, No. 742,958, improvement in Paper Money Deliveries. Marked Government's exhibit "354."

There was offered and received in evidence a duly certified copy of pending application of Nelson White, filed March 20, 1913, No. 755,817, improvement in Adding and Listing Machines. Government's exhibit "355."

There was offered and received in evidence a duly certified copy of pending application of Thomas Bilyeu, No. 767,355, filed May 13, 1913, improvement in Paper Currency Paying Machines. Government's exhibit "356."

There was offered and received in evidence a duly certified copy of pending application of Nelson White, filed May 6, 1914, No. 836,771, improvement in Ribbon Feeding Mechanism. Marked Government's exhibit "357."

There was offered and received in evidence a duly certified copy of pending application of Nelson White, filed May 12, 1914, No. 838,065, for improvement in Coin Delivering Machines, Government's exhibit "358."

Thereupon the District Attorney asked the witness the following question: "Now, one part of your testimony I would like to have clear in the minds of the jury,

Mr. Sewell, relative to the search that you made as to the ownership of patents, and patent applications upon the part of the United States Cashier Company. Now, have I produced here and introduced in evidence certified copies of all applications pending in the United States Patent Office that have been assigned to the United States Cashier Company, together with certified copies of all patents issued to the United States Cashier Company, together with certified copies of the applications and patents that were assigned to the International Money Machine Company, between the dates of January 1, 1909, and December 31, 1914?

A. Four applications assigned—four patents and applications assigned to the International Money Machine Company direct from Mr. Bilyeu, and fourteen applications assigned to the United States Cashier Company, and subsequently to the International Money Machine Company.”

The witness stated that the design patent of Mr. Bilyeu had not been introduced, but that the witness had been examined upon that.

Counsel then said: “So that I have examined you upon all of the patents that have been issued, either to the United States Cashier Company, or issued to any one else, and assigned to the United States Cashier Company, or issued to the United States Cashier Company, and assigned to the International Money Machine Company?

A. I believe you have, sir.

Q. And as far as your search and examination of the records in the Patent Office discloses, this is all?

A. Yes, sir."

Later the Government offered, and there was received in evidence, pending application of William S. Overlin, filed October 31, 1912, No. 728,853, for improvement in Money Deliveries for Street Cars and Lightning Change Makers. This was Government's exhibit "359."

There was evidence tending to show that about January, 1914, the defendant Menefee, and the other officers and directors of the United States Cashier Company, finding that the manufacture of the machines at Portland, where a factory had been established and had been in operation, was not satisfactory and economical, and that it lacked capital, caused to be organized and incorporated the International Money Machine Company, at Terre Haute, Indiana, and had procured additional subscriptions to the capital stock of that corporation; that an arrangement had been made by which the United States Cashier Company transferred to the International Company substantially all of its assets in Oregon, and had effected a contract with the International Company and promoters, by which the United States Cashier Company received something more than fifty per cent. of the paid up stock in the International Company, and that the design and purpose of the defendants and officers of the United States Cashier Company was to continue the manufacture of the machines which they had commenced to manufacture and to conduct the business in Terre Haute, Indiana, and that that

Company had proceeded, and at the time of the trial was proceeding to manufacture and sell one of the machines involved, and for which an application for a patent was pending to the International Money Machine Company. One of the machines recently manufactured by the Indiana Company was used in evidence and demonstrated in the presence of the jury to show its workings.

And there was evidence tending to show that the assignments made of the applications and patents by the several persons named in the foregoing testimony had been made by the applicants or by the Cashier Company to the International Money Machine Company as a part of the assets of the Cashier Company, under the arrangements and contract hereinbefore referred to.

There was some evidence by several of the stockholders of the United States Cashier Company to the effect that they had not been notified and had not consented to the transfer of the assets of the Cashier Company, and to the arrangement that had been made by the Directors.

At the close of the case, and in due time under the rules of court, the defendant asked the Court to give the following instructions:

I.

The fundamental question in this case is the good faith of the defendants in respect of the enterprise of manufacturing and selling the machines described in the indictment and in the evidence. If they honestly intended to establish a business to manufacture and to sell

the machines, in the belief that the business would be profitable to the corporation and its stockholders, you cannot find them guilty of the charge in this indictment. Or, if you have a reasonable doubt about that, you must give the defendants the benefit of that doubt and acquit them.

II.

The fundamental question in this case is the good faith of the defendants in respect of the enterprise of manufacturing and selling the machines described in the indictment and in the evidence. If they honestly intended to establish a business to manufacture and to sell the machines, in the belief that the business would be profitable to the corporation and its stockholders, you cannot find them guilty of the charge in this indictment that the United States Cashier Company was not engaged in either the business of manufacturing or selling said machines or any thereof.

III.

You cannot decide in this case that the patent of Osborne or Lindelof or Cook dominated or affected injuriously any patent issued Bilyeu and Potter, or claims allowed by the Patent Department of the United States to the defendants or the United States Cashier Company or which were assigned to said Company.

IV.

Any representations made by the defendants that they had procured a patent that they did in fact procure

or had claims allowed that were in fact allowed, cannot be found by you to be a misrepresentation.

V.

Bad faith or fraudulent misrepresentations cannot be imputed to defendants in respect of patents they in fact procured or in respect to claims that were in fact allowed because of claims of infringement of prior patents by other persons that were made or might be made, and there is no competent evidence in this case that any such infringement in fact exists.

VI.

In respect to the last instruction, I instruct you that the opinion of the witness Sewell that the Osborne patent dominated the construction of the defendants' patents or machines constructed thereunder, is not competent evidence that it does in fact dominate them or affect them, and that you are to disregard that evidence.

Winans v. New York R. R. Co., 21 How. 98, 101.

Corning v. Burden, 15 How. 252; 20 U. S. 503, 508.

VII.

A representation to be fraudulent must not merely be false, but must have been made in bad faith, and with the fraudulent intent to deceive to the injury of the person to whom the representation was made.

VIII.

Honest mistakes or errors of judgment in respect of patents or patent claims or patent situation cannot be imputed to defendants as evidence of bad faith or of a fraudulent purpose.

IX.

Honest mistakes or errors or mis-statements inadvertently made without a fraudulent purpose, in respect to any of the matters disclosed in the evidence, even though they are material, are not fraudulent.

X.

There is a presumption of law when patent is issued by the Department that it does not infringe any prior patent.

Miller v. Eagle, 151 U. S. 208; 14 Sup. Ct. 310, 319.

Ransome v. Hyatt, 69 Fed. 148. Opinion by Judge Gilbert holding it was error to refuse instruction that the issuance of a patent creates a prima facie presumption of a patentable difference from complainant's patent.

Miller v. Eagle, *supra*, and
Boyd v. Pool Co., 15 Sup. Ct. 837.

XI.

Expert evidence is not competent to rebut the prima facie presumption that the patents obtained by the defendants and the Cashier Company do not infringe the

prior patents mentioned in the evidence, and you are to disregard the evidence of Mr. Sewell to that effect, and you are to find in accordance with the *prima facie* presumption that the said prior patents are not infringed by any of the patents obtained by the defendants and the Cashier Company.

Cases *supra*.

XII.

The issuance of a patent by the Department is a decision of the officers of the Department charged with that duty, that the patent does not infringe any prior patent and the patentee, in accepting the patent, is not thereby guilty of bad faith, but on the contrary his good faith must be presumed.

Cases *supra*.

And thereafter the Court instructed the jury in full as follows, which are all the instructions that the Court gave to the jury:

“You are to be congratulated that your labors in this case are about to end. You have sat here through a long and protracted trial, listening to the testimony and the arguments of counsel, and their construction and application of the testimony. I now ask your careful attention while I attempt to state to you the issues you are to determine and the rules of law by which you are to be guided in arriving at your verdict. When I have done this, the duty of the court in this case ends, and the responsibility rests with you.

“The defendants Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E. Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell have been jointly indicted by the grand jury of this district charged with having entered into a conspiracy to commit an offense against the United States by violating what is commonly known as the Postal Fraud Statute. The defendants Hunter, Hopson, and Muraine are not on trial. The court has sustained a motion for a directed verdict as to the defendant Bilyeu, on the ground that no substantial testimony was offered by the Government to connect him with the conspiracy charged in the indictment, and therefore, whatever conclusion you may come to as to the other defendants, it will be your duty to return a verdict of not guilty in favor of the defendant Bilyeu.

“The indictment is based on Section 37 of the Federal Penal Code, which, for the purposes of this case, provides that, if two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties thereto shall be guilty of a crime and punished accordingly. It is important, therefore, at the outset that you have a clear conception of what constitutes a crime under this section, and of the evidence necessary to establish it. I therefore repeat the statute: It is that, if two or more persons conspire to commit an offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties thereto shall be guilty of a crime.

“You will observe that there are three essential elements necessary to constitute a crime under this statute. First, there must be the act of two or more persons conspiring and confederating together. One person cannot conspire with himself, and therefore there must be at least two persons acting together in order to constitute a conspiracy. Second, it must appear that the purpose of the conspiracy was to commit an offense against the United States, that is, to violate some law of the United States. And, third, one or more of the conspirators, after the conspiracy has been formed, must do some act to effect the object thereof. Each of these elements is an essential ingredient of the crime charged, and must be established by the Government, to your satisfaction beyond a reasonable doubt, before you can find a verdict in its favor.

“Now, taking them up in their order: A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal and unlawful purpose, or some purpose not in itself unlawful or criminal by criminal or unlawful means. A common design is the essence of a conspiracy, and it is therefore necessary, in order to prove a conspiracy, for the Government to show a combination of two or more persons, by concerted action, to accomplish a criminal purpose. It is not necessary, however, for the Government to prove that such parties met together and entered into an explicit or formal agreement to that effect, or that they directly, by words or in writing, stated what the unlawful scheme was to be, or the details of the plan or means by which it was to be made effective. A conspiracy may be, and

usually is, shown and proven by circumstances. Persons who contemplate committing a crime do not ordinarily place their intentions in writing, nor enter into any formal agreement for that purpose; but their agreement or understanding is generally to be determined from their acts and conduct and the entire circumstances surrounding their relationships and transactions.

“Guilty connection with a conspiracy may be established by showing association of the persons accused in and for the purpose of prosecuting the illegal object. It is enough if the minds of the parties meet understandingly so as to bring about an intelligent and deliberate agreement to do the act and commit the offense charged, although such agreement be not manifested by formal words.

“While a conspiracy may be proven by circumstantial evidence, yet the circumstances relied on for the proof must be such as to show that there was a common agreement or understanding, and the mere fact that two or more persons, on different occasions, did acts of a similar nature looking toward the same end or result, would not constitute, as a matter of law, a conspiracy, unless there was a common design and intention. The evidence must show that the parties accused, and each of them, agreed and confederated together to do the acts charged.

“Each party to a conspiracy must be actuated by the intent to promote the common design, but each may perform separate acts, or hold distinct relations, in promoting such design. Thus, if two persons pursue by their

acts the same object, by the same means, one performing one part and the other another part, so as to complete it, with a view to attaining the object they are pursuing, that will be sufficient to constitute a conspiracy. Nor is it necessary that the conspirators should be acquainted with each other, or that each should know the exact part to be performed by the other in the execution of the common design. It is enough if two or more persons, in any manner or through any contrivance, positively or tacitly come to a mutual understanding to accomplish a common unlawful design. In other words, where an unlawful end is sought to be effected, and two or more persons, actuated by a common purpose to accomplish that end, work together in any way in pursuance of the unlawful scheme, every one of such persons becomes a member of the conspiracy, although the part that he was to take therein was a subordinate one, and was to be executed at a remote distance from the other conspirators.

“Again, one who, after a conspiracy is formed, with knowledge of its existence, joins therein and aids and participates in its execution, becomes as much a party thereto from that time on as if he had been an original conspirator. Furthermore, where two or more persons are proven to have combined and confederated together for some illegal purpose, any act done by one of the parties, in furtherance of the common design and with reference to the common object, is in law the act of all, and therefore proof of such act will be evidence against any of the others who are engaged in the same conspiracy.

“It is also true that any declaration by one of the parties, in furtherance of the conspiracy or in execution thereof, during the pendency thereof, is not only evidence against himself, but evidence against the other parties, who, when the conspiracy is formed, are as much responsible for such declarations and acts to which it relates as if made or committed by them. This rule applies to the declarations and acts of a conspirator although he may not be under prosecution or on trial. His declarations are equally admissible with those of the parties under indictment and being tried. But the declaration of a conspirator not in execution of the common design, or merely narrating past events, is not evidence against any of the parties other than the one making such declaration.

“One cannot be made a member of a conspiracy except by his own conscious act, and not by the acts and declarations of another.

“The second essential element of a conspiracy, so far as the case in hand is concerned, is that its purpose was to commit an offense against the United States.

“The law in force at the time it is alleged the conspiracy charged in the indictment was formed and existed provides that whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations or promises, shall, for the purpose of executing such scheme or artifice or attempting to do so, place or cause to be placed any letter, postal card, package, writing, circular, pamphlet, or advertise-

ment in any postoffice, to be sent or delivered by the postoffice establishment of the United States, shall be guilty of a crime and punished accordingly.

“It is this statute the defendants are charged with having conspired to violate.

“The postoffice establishment of the United States is a public agency, created and maintained by the Government at public expense, for the convenience of all the people. It is important, therefore, that this agency should not be used for the purpose of promoting fraud, and Congress has passed the law to which I have called your attention prohibiting such misuse of the mails, and it is the duty of courts and juries to enforce this statute whenever and however violated.

“To devise, within the meaning of this statute, means to form a scheme, to lay a plan—to contrive. A scheme is a design or plan formed to accomplish some purpose. An artifice is an ingenious contrivance or device of some kind, and the term as used in the statute is equivalent to trick or fraud. To defraud implies or includes all acts, omissions, and concealments which involve a breach or legal or equitable duty, trust or confidence generally imposed, and are injurious to another, or by which an undue and unconscionable advantage is taken of another. It means to wrongfully deprive one of something he already has. Fraudulent pretenses, representations, or promises mean such fraudulent suggestions or representations of an existing or past fact or promise as to the future, by one who *known* it not to be true, as are adapted to induce the person to whom they are made to

part with something of value. It is necessary, therefore, that it should appear, to your satisfaction, from the testimony and beyond a reasonable doubt, that the conspiracy entered into by the defendants, if there was such a conspiracy, was to devise a scheme or artifice to defraud, or to obtain money or property by means of false and fraudulent pretenses or representations, to be effected by the postoffice establishment of the United States.

“The third essential element of the crime charged is that one or more of the conspirators should, after the conspiracy was formed and during its existence, do some act to effect the object thereof. And the act of one conspirator for this purpose is, in law, the act of all.

“With this general statement of the law, we come to a consideration of the specific charges against the defendants on trial, and upon which they are to be convicted or acquitted.

“The indictment, which forms the basis of the charge, after alleging the incorporation of the United States Cashier Company, with an authorized capital of \$1,200,000 divided into 120,000 shares, of the par value of \$10 each, and the official relation the several parties bore to such corporation, charges in brief that, on or about the first day of September, 1910, the exact date being to the grand jury unknown, the defendants on trial and the other parties jointly charged with them conspired and confederated together to devise and execute a scheme to defraud, to be effected by means of the postoffice establishment of the United States, to obtain

money and property, by means of false and fraudulent representations, pretenses and promises, from some 55 persons named in the indictment, and designated and referred to as "investors," and other persons to the grand jury unknown and the public generally, by inciting and inducing such persons to open correspondence with the defendants and the corporation, and to purchase from them and the corporation shares of stock in such corporation, paying over and delivering to the defendants in exchange therefor money and property; that such purchases were to be induced by means of false and fraudulent representations and statements by the defendants, in newspapers, pamphlets, catalogues, and letters, to be transmitted through the United States mails, and by words orally spoken, that the corporation owned patents to a certain change-computing machine, a bank cashier, a lightning change maker, a currency paying machine, and a new style adding machine; that the corporation was engaged in the business of manufacturing and selling such machines; that on account of its ownership of the patents and the manufacture of the machines, the shares of the capital stock of the corporation were of great value, and that large dividends would be paid thereon within six months from the date of the purchase of the stock; that the corporation had a large number of bona fide orders for the purchase of machines, on account of which it would make a large profit; that the financial condition of the corporation was excellent, its assets largely exceeding its liabilities; that a certain amount of the stock offered for sale by the defendants belonged to the company, and that the money derived therefrom would belong to the corporation and be used

by it to increase its assets, and particularly for increasing its manufacturing capacity; that by reason of the financial condition of the company, it was justified in increasing from time to time the selling price of its stock. It is further charged that it was a part of the conspiracy that the scheme to defraud should be carried out by the defendants, from time to time during its existence, fraudulently and designedly publishing and causing to be published false and untrue statements of the assets and liabilities of the company, and of its financial condition, in which it would be made to falsely appear that the assets were greatly in excess of their value and the liabilities less than the true amount thereof. It is further charged to have been a part of the conspiracy and scheme that the defendants should so manage and control the business of the corporation that more than 25 per cent of the money received from the sale of stock would be appropriated by them to their own use and benefit, and that, for the purpose of inducing persons to purchase stock, they would from time to time wrongfully and fraudulently increase the selling price thereof. It is then stated that these proposed representations, statements, pretenses, and promises, except the ownership of the patent for the bank cashier, were untrue, and known to be such to the defendants and each of them, and were to be made for the purpose of cheating and defrauding the investors out of their money and property, and that the defendants well knew such investors would lose all the money invested by them. It is further charged that it was the understanding and agreement that the conspiracy was to, and did in fact, continue from September 1, 1910, to January 1, 1915, and that

the defendants, and each of them, were parties thereto during that time.

“It is also alleged that, in pursuance of the conspiracy charged, and to effect the object thereof, the defendants Bonnewell, Menefee and LeMonn deposited and caused to be deposited in the United States mails, and for transmission thereby, certain letters and telegrams set out in the indictment, and which have been referred to throughout the trial as the overt acts.

“The defendants have each entered a plea of not guilty. This plea is a denial of every material allegation in the indictment, and imposes upon the Government the burden of proving each and all of these to your satisfaction, beyond a reasonable doubt, before you will be justified in returning a verdict in its favor.

“Now, the material allegations in brief are, first, that there was a conspiracy, agreement, or understanding upon the part of the defendants; second, that such conspiracy was to devise the particular scheme to defraud set out in the indictment; and, third, that it was a part of the understanding and agreement that the postoffice establishment of the United States was to be used for the purpose of executing the scheme. It is therefore incumbent on the Government to prove, not only that the defendants conspired together to devise the particular scheme set out in the indictment, but that it was a part of such agreement or conspiracy that the scheme should be executed by the use of the postoffice establishment of the United States; and if as to any one or more of the defendants the Government has

failed to prove any one or more of the elements necessary to constitute the crime charged, it is your duty to find such defendant or defendants not guilty.

“The jurisdiction of this court over this case is because of the charge that it was a part of the alleged conspiracy or agreement that the scheme, if there was a fraudulent scheme, should be executed by the use of the United States postoffice establishment. This court does not have jurisdiction to punish persons for entering into fraudulent schemes or devices, nor for committing frauds, unless it is a part of their agreement that the United States mails should be used in carrying them into effect. Therefore, even though you should find that the defendants did agree together to devise a scheme to defraud, it would not be sufficient to justify their conviction unless it also appears that it was a part of such conspiracy that the United States mails should be used for executing it. And even if injury resulted from the acts of one or more of the defendants, brought about and executed in whole or in part by the use of the mails, it would not justify a conviction of such defendant or defendants unless it further appeared that the original agreement or understanding contemplated the use of the mails in furtherance of their common purpose.

“The indictment charges that the alleged fraudulent scheme was to be carried out and executed by certain specific false representations. It is not incumbent upon the Government to prove that all of the means set out in the indictment were in fact agreed upon to carry out the alleged conspiracy, or that any of them were ac-

tually used or put into operation. It is sufficient if it be shown to your satisfaction, beyond a reasonable doubt, that the conspiracy was entered into for the purposes indicated, and that one or more of the means described in the indictment were to be used to execute it, and that, during the continuance of the conspiracy, the alleged overt acts, or some one or more of them, stated in the indictment were done by one or more of the conspirators to effect the object thereof.

“It is charged in the indictment that one of the means to be used by the alleged conspirators to carry out their fraudulent scheme was to represent that the United States Cashier Company owned patents to the certain coin machines heretofore mentioned, when in truth and in fact they did not own such patents. If it was a part of the conspiracy, if a conspiracy existed, that the defendants should represent that the corporation owned patents to the machines which they proposed to manufacture, and such representations were false and known to be so to the parties making them, and were made for the purpose of inducing and persuading persons to purchase stock, it would constitute a scheme to defraud within the statute. And you in this connection should consider any wilful misrepresentation that the defendants may have made in relation to the patent situation. But if at the time these representations were made the company did in fact have patents, issued by the Patent Office of the United States, for any of the machines, the representations, so far as that particular machine was concerned, would not be false. Bad faith or fraudulent misrepresentations cannot be imputed to the defendants

in respect of patents in fact issued, and owned by them, or in respect to claims that are in fact allowed, because of some alleged infringement. There is a presumption of law that, where a patent is issued by the United States Patent Office, it does not infringe any known patent, and a patentee in accepting such patent is not thereby guilty of bad faith. You are not called upon to decide in this case whether the patents issued or the claims allowed were in fact an infringement of some invention or patent, or were dominated or affected injuriously by the Osborne and Lindelof or the Cook patents, or any previous invention, and the evidence of the witness Sewall to that effect should be disregarded. The question on this branch of the case is, were the representations made by the defendants, if any, concerning the patent situation false and made in bad faith, with a fraudulent intent to deceive purchasers of stock in or of the company, or were they made in good faith, with an honest belief in their verity? A representation to be fraudulent must not only be false, but must have been made in bad faith and with a fraudulent intent to deceive, to the injury of the person to whom the representations were made. Honest mistakes or errors of judgment in regard to these matters, or any matters involved in this case, or statements inadvertently made, without a fraudulent purpose, even if material, are not fraudulent. As I understand the testimony, it is admitted that, at the time the advertisements were inserted in the newspapers, the company did not own patents to all the machines therein enumerated, and whether those representations that they did own patents to machines to which they had no patents, if such representations were

in fact made, were fraudulent and made for the purpose of deceiving purchasers of stock is a question for you to determine from the testimony in this case.

“It is also charged in the indictment that other proposed means of carrying out the fraudulent scheme were to falsely represent that the United States Cashier Company was engaged in the business of manufacturing and selling these coin machines; that the company had a large number of bona fide orders for the purchase of machines, and that the financial condition of the company was excellent, and such as to justify increasing from time to time the selling price of the stock, and that certain stock to be offered for sale belonged to the company, and the money derived therefrom would belong to the company, and be used by it, and become a part of its assets, and be used in its manufacturing business. If these representations, or any of them, were agreed to be made, and were false and known to be such to the defendants, and were to be made for the purpose of deceiving the public, they would constitute schemes to defraud within the meaning of this statute.

“Respecting the charge of the false representations regarding the enterprise of manufacturing and selling the machines mentioned in the indictment and the evidence, if the defendants honestly and in good faith intended to establish a business to manufacture and sell the machines, in the belief, as the situation then appeared to them, that it would be profitable to the company and its stockholders, you cannot find them guilty of the charge that the company was not intending to

engage in either the business of manufacturing or selling such machines.

“With reference to the evidence that the price of the stock was raised at intervals, if you find that it was done in the honest belief at the time that the progress of the affairs of the company justified such raise, and that the stock was of the value of the increased price, though such belief may not have been justified by the then condition of the enterprise as indicated by subsequent events, you cannot find the defendants guilty because they proved to be mistaken about that.

“The statute which it is charged the defendants conspired to violate includes everything designed to defraud by false and fraudulent representations as to the past or present, or suggestions and promises as to the future, and the significant fact in this case is the intent and purpose of the defendants in making the representations charged in the indictment, if they were in fact made. The question for your determination is not whether the business which the defendants were engaged in promoting was a legitimate business, or was practicable or not. If the corporation, and the defendants as officers and agents thereof, entered in good faith upon the business, believing that the representations made by them, or to be made, were true, and that they could and would earn enough to justify the promised returns on the investment, they should not be convicted, no matter how visionary you may consider their plans. Their good or bad faith in these matters is to be determined, and their several acts and declarations con-

strued and interpreted, by conditions as they existed at the time the statements and declaration were made, and as they appeared to the defendants at that time, and not by the final result of the enterprise, or from present conditions.

“To constitute a scheme to defraud, to be carried out by the use of the United States mails, it is not necessary that the scheme would be fraudulent on its face. Although apparently a legitimate business, it is within the statute if there was an intent not to conduct the business honestly, but to use it as a basis to defraud.

“The indictment, after setting out the conspiracy and the purpose thereof, and the means to be used to effect the same, alleges that, in furtherance thereof and for the purpose of effecting its object, certain letters were mailed by the defendants Bonnewell, LeMonn and Menefee, and sent through the United States mails to the parties named in the indictment, and these constitute what have been referred to throughout the trial as the overt acts, or the acts done by one or more of the conspirators to effect the object thereof. This is an essential allegation, and must be proven by the Government. A conspiracy alone does not constitute a crime, but one or more of the conspirators must, after its formation, do some act to effect the object thereof. It is not necessary for the Government to prove each of these acts. If you are satisfied, beyond a reasonable doubt, that one or more of the letters set out in the indictment were sent by one of the conspirators, if there was a conspiracy, after its formation and during its

existence, to effect the object thereof, that is all the law requires. And in determining whether the letters set out were sent by one of the conspirators to effect the object of the conspiracy, if one was formed, you should consider the character of the letters, the purpose to be accomplished thereby, and all the circumstances bearing upon that question, and from that determine what the object and purpose was in sending the letter or letters through the mails.

“The indictment also charges that it was the purpose or intent of the defendants to defraud the persons named in the indictment, and the public generally, out of their money. The law presumes that every person intends the natural and probable consequence of his own act, and if you believe from the evidence, and beyond a reasonable doubt, that the defendants, or any two of them, conspired to do the things named in the indictment, substantially in the manner and form as therein set out, and that it was the natural and probable consequence of their acts that purchasers of stock of the Cashier Company would be defrauded, then you would be justified in finding that it was the intent of such defendants so entering into the conspiracy, if there was a conspiracy, to defraud the persons named.

“In order for one person to defraud another, it is not necessary that he should bear any malice or ill will toward such person. If the defendants in this case agreed together that they were to sell the shares of stock in this corporation upon and on account of false and fraudulent representations, which they would make

knowing these representations would be false and untrue, and knowing that they would be made for the purpose of deceiving the investors and the public as to the true condition and value of the shares of stock, then the law would imply that they intended to defraud all of the persons who should buy shares of stock from them, or from the Cashier Company, relying upon such representations.

“It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company a success? Was it their belief that they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises; if they agreed to make false and fraudulent representations and assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they could finally make it a success, would by no means furnish any condonation or legal excuse for the false and fraudulent representations, which they would under the circumstances agree to make in order to induce the investors and the public to pay over their money.

“In considering this question, the question of and concerning the intent to defraud, you must direct your

attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business or the corporation a success, or how confident they may have been that they would be able to return that money without loss, or with profit, because the representations which they would have agreed to make would be made for the purpose of getting the money in a wrongful manner, and they could not, under such circumstances, make them rightful by pointing to some ultimate good intent.

“The parallel between such a case as I have presented and the crime of embezzlement is very close. It is a well-known fact that nearly every man who embezzles money expects that he will be able to pay it back without loss; but his taking is wrongful, and his intent to pay it back without loss cannot cancel the wrong. And so in this case, if the defendants, by means of the false and fraudulent representations set out in the indictment, agreed to mislead investors and the public generally into paying over to them or to the Cashier Company their money and their property, then their belief that they could ultimately return that money without loss and with profit would not condone the wrong in getting the money by deception.

“The law presumes that every man intends the logical and natural consequences of his own wrongful

act. Applying this rule to the case at bar, if you believe from the evidence, and beyond a reasonable doubt, that these defendants agreed among themselves that they would sell to the public and to these investors the shares of stock of the United States Cashier Company, under the false and fraudulent representations set out in the indictment, or some of them, then you would be justified in finding that the defendants agreed to defraud the investors and the public, notwithstanding the fact that you also might believe that the defendants really believed that the value of the stock would be ultimately such as to return to the investors a profit instead of a loss.

“It is not necessary in this case, in order to convict one or more of the defendants, that you should be satisfied that each of the defendants knew or understood all of the fraudulent representations, promises, or pretenses that were to be made, if any were to be made. If one of these defendants, at any time prior to the period of three years from the date of filing the indictment, and prior to the time when any overt act set out in the indictment was committed, agreed with another of said defendants that they would act jointly in carrying out the alleged fraudulent scheme set out in the indictment, and in selling the stock of the corporation representing that the money to be received from such sale was to go into the treasury of the company to be used by it in building factories, knowing that the shares of stock which were to be offered for sale were in truth and in fact the privately owned stock of another of the defendants, and that none of the money would go into

the treasury of the company, and you further believe from the evidence that some of the false and fraudulent pretenses and promises set out in the indictment were to be used by the defendants for the purpose of inducing the investors to purchase such shares of stock, then you would be justified in finding that such persons so agreeing to sell the stock in said manner and under such false representations were parties to the conspiracy.

“If you believe from the evidence that the original purpose of the defendants was legitimate, and you further believe from the evidence that they believed in the future of the United States Cashier Company and believed that it would ultimately pay dividends to the investors, and you believe from the evidence and beyond a reasonable doubt that they deliberately agreed together to take advantage of the public interest in a meritorious invention in order to sell to the public shares of stock by the false and fraudulent representations set out in the indictment, if they were false, then you would be justified in finding that the defendants intended to defraud the persons to whom they should sell such stock.

“In determining whether or not the defendants intended to defraud the investors of the money by selling to them the shares of stock of the corporation, you have a right to take into consideration the question of the commissions which the evidence shows, or tends to show, were received by the defendants, or any of them, from the proceeds of the sale of the stock.

“Now, the intent to form a scheme or artifice to defraud is an act of the mind which necessarily involves

an intention to defraud. The purpose to devise such a scheme and the evidence of such intent may be shown by the acts and declarations of the parties and by attending circumstances, as well as by direct evidence. Whether such an intent has been proved in this case is a question of fact for your determination. Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law permits a resort to circumstances as a means of ascertaining the truth, and in such case great latitude is allowed by the law to the acceptance of indirect or circumstantial evidence, the aid of which is constantly required, not merely for the purpose of remedying the want of direct evidence, but also to supply protection against imposition. Whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the failure of direct proof, great latitude is allowed in its admission, for the reason that the force and effect of circumstanital facts usually, and almost necessarily, depend upon their connection with each other. Circumstances altogether inconclusive if separately considered may, by their number and joint operation, established or corroborated by minor circumstances, be sufficient to constitute conclusive proof. And where fraud in the purchase or sale of property is in issue, evidence of frauds of like character, committed by the same parties at or near the same time, is admissible, on the ground that, where transactions of a similar character executed by the same parties are closely connected in point of time, the inference is reasonable that they proceed from the same motive.

“In order to constitute a scheme and artifice to defraud, it is not necessary to show that the defendants intended to defraud every person with whom they might have dealings, or that their entire business was a fraud. Neither is it necessary to show or prove that the scheme or artifice was developed all at one time.

“While circumstantial evidence is admissible and competent to establish a fraudulent intent, it is equally admissible and competent for the purpose of establishing good faith and honesty of purpose, or the non-existence of a fraudulent intent; and it is for you to say in this case, from all the facts and circumstances, whether the defendants entered into a conspiracy to devise a scheme and artifice for the purpose of defrauding those with whom they might deal, as charged in the indictment, or whether they acted in good faith. They are not on trial for evolving or devising an improvident or impracticable scheme, even though you should find their plan to be such. Nor are they on trial for mere errors of judgment. They are on trial for a criminal offense, and an essential element of that offense is an evil or criminal intent, which it is incumbent upon the Government to prove to your satisfaction, beyond a reasonable doubt. And where, as in this case, circumstantial evidence is relied on, the circumstances themselves must be proven, to the satisfaction of the jury and beyond all reasonable doubt, and when so proven, they must not only be consistent with the main fact in issue, namely, the guilt of the defendants, but they must be inconsistent with every other rational hypothesis. The question for your determination is whether the defendants were act-

ing in good faith in the sale and disposition of the stock of the corporation with which they were connected, or whether they were using such corporation and its business as a basis for a fraudulent scheme. It is sufficient, for the purpose of the present case, if a conspiracy is shown to use the mails in furtherance of a scheme or artifice to defraud, by means of the false and fraudulent representations set out in the indictment, by which the right of the purchasers of stock in the corporation to open and fair dealing was to be invaded, and that such fraud was to be accomplished by any of the means set out in the indictment, and that the letters sent by one or more of the conspirators and referred to in the indictment were written and mailed to effect the object of the conspiracy and in furtherance thereof. The formation of the corporation and the sale of stock therein is not itself criminal or wrongful, provided no deception or fraud is used to induce persons to make such purchases. The defendants, therefore, are not to be found guilty merely for selling or offering for sale stock in the corporation, although it may have proven an unprofitable investment to the purchaser, nor for mere mistakes or errors in judgment. And there is no presumption of fraud from the fact that glittering and glowing promises may have been made and not carried out, unless it shall appear that the persons who made such promises knew at the time of making same that they could and would not be carried out.

“The indictment charges that the conspiracy was formed in September, 1910. The date is not material. It is sufficient if it was formed sometime prior to the

overt acts charged in the indictment, and continued and was in existence at the time of such acts.

“Now, if you are not satisfied from the evidence, beyond a reasonable doubt, of the existence of the conspiracy as charged in the indictment, or if you have a reasonable doubt in that matter, you should return a verdict of not guilty as to all the defendants. If, however, on the other hand, you do believe beyond a reasonable doubt that the conspiracy was formed in manner and form as stated in the indictment, it will be necessary for you to determine who were the parties to such conspiracy. If there was a conspiracy as claimed by the Government, it would seem from the evidence that Menefee and LeMonn must be parties thereto. Menefee was the president and general manager of the company, and LeMonn was the sales manager, and together they had charge of the stock-selling campaign. Whether these two parties conspired and confederated together to defraud purchasers of stock in the manner and form as set out in the indictment is a question for you to determine from the testimony. And whether any of the other defendants were parties to the conspiracy, if you find one existed, is to be determined from the evidence offered against them. Before they, or any of them, can be convicted, it must appear that they were parties to the conspiracy set out in the indictment, and they cannot be convicted on evidence that they devised or were parties to some other conspiracy not charged.

“Gernert, Bonnewell and Todd were sales agents of the company, engaged in selling the corporate stock in pursuance of an agreement with the officers of the

corporation. Their connection with the alleged conspiracy cannot be established, as to any of them, by the acts and declarations or statements of the other defendants, made without their knowledge. One cannot be made a member of a conspiracy except by his own acts or declarations, and the acts and declarations of another are not evidence against him.

“Numerous letters have been offered and read in evidence, written or purporting to have been written or dictated by the defendants Menefee and LeMonn, and addressed to divers and sundry persons. These letters, if they contain statements tending to establish a conspiracy, are competent evidence to be considered by you as against the writer; but no statements made therein are to be taken as evidence against the other defendants not connected with such letters. The connection of the other defendants with the conspiracy must be determined from their own acts and conduct, and not from the declarations of the other alleged co-conspirators. Before either of the sales agents can be convicted, you must be satisfied, beyond a reasonable doubt, that the conspiracy existed as charged in the indictment, that they knew of its existence and purpose, and, with full knowledge thereof, joined therein with the purpose and intent of assisting in its accomplishment. Mere suspicion or conjecture that they were connected with an unlawful combination, if there was such a one, is not enough. All the facts necessary to make them conscious participants therein must be shown before you can find them guilty. If they acted in good faith, relying upon the representations and statements of their

superior officers, believing them to be true, they should not be convicted because they repeated such statements to intending purchasers.

“If, however, you find from the evidence that a conspiracy was entered into and existed as alleged in the indictment, and that, after its formation and while it was in existence, the defendants Gernert, Bonnewell and Todd, or either of them, became willing parties thereto and assisted in carrying it out, they would continue to be parties thereto and bound by every act in furtherance thereof until such time as they should by some act of their own, withdraw therefrom. To withdraw from a conspiracy after entering into it requires an affirmative action of withdrawing. If one willingly assists in starting evil forces into operation, he must affirmatively withdraw his support from them, or he must suffer the consequences of incurring guilt by those connected therewith; and until he does so withdraw there is conscious offending. These sales agents had a right to rely and act upon any statements made to them by their principal or employer, without inquiry as to whether they were true or false, if they honestly believed them to be true, unless, of course, it is apparent upon their face that they could not be true, and if an employer informs an employe that certain facts exist and are true, and that certain representations or promises may be made or carried out, the agent has a right to repeat these statements to such person or persons whom he has a right to interest in his project, without being criminally responsible for them, even though it afterwards transpires that they are not true. And it is not sufficient in this

case for the Government to show certain acts of these sales agents, or that these agents performed certain acts, and that one or more of the other defendants performed other and different acts, even though they had a similar purpose in view, unless it further appears that there was a common concert of action between them and an agreement so to act. These sales agents were not officers of the Cashier Company, and stood in no fiduciary relation toward its stockholders, or such persons as might become such stockholders. They were mere salesmen, and therefore had a right to make such a contract or agreement with the officers of the company concerning their own compensation as they were able to make, provided it was done in good faith, and with no intention to enter into any conspiracy that existed, if there was one.

“It is claimed as against both Gernert and Todd that they sold private stock, representing it to belong to the company and that the money derived therefrom would go into the treasury of the company, when in truth and in fact they appropriated the money to their own use, and the stock belonged to parties other than the corporation. Now, neither of these acts would constitute a crime within this indictment, unless you believe from the testimony, beyond a reasonable doubt, that these gentlemen knew of the alleged conspiracy, and that it was a part of such conspiracy that private stock should be sold as the stock of the corporation and upon a representation that the money derived therefrom should go into the treasury of the company.

“Again it is claimed, on behalf of Todd, that he severed his connection with this company some time early in 1912, and abandoned his previous relations with it, and therefore withdrew from the conspiracy, if there was a conspiracy at that time. Now, if that is true, or if you have a reasonable doubt upon that subject, then the fact that he subsequently, some year or two later, sold on his own account stock which he had purchased from one of the officers of the company, representing that it was company stock or that the money derived therefrom would go into the coffers of the company, would not justify a verdict of guilty as against him under the indictment now under consideration. And this same statement would apply to the defendant Bonnell. Before either of these, or any of these defendants can be convicted, it must appear that they were parties to the conspiracy charged in the indictment, and that their acts were done in pursuance thereof and in furtherance of such conspiracy.

“Now, gentlemen, this is a criminal case. The defendants have each entered a plea of not guilty, and, as I have said to you, that imposes upon the Government the duty of proving every material allegation necessary to constitute the crime, to your satisfaction beyond a reasonable doubt, before you can convict.

“When I have said heretofore in these instructions that a certain fact must be established by the Government, or a certain fact must be proven before you are justified in finding a verdict of guilty, I have meant always that it must be proven to your satisfaction beyond a reasonable doubt.

“The defendants, and each of them, are presumed to be innocent of this charge. This presumption is not a mere fiction which can be disregarded at pleasure. It is a substantial part of the criminal law of the country, and continues and abides with the defendants throughout the trial until overcome by the testimony. They are not required by law to prove their innocence. The burden is upon the Government to prove their guilt, and that beyond a reasonable doubt.

“By a reasonable doubt I do not mean a mere possible doubt, a mere captious doubt, but such a doubt as would cause a reasonable prudent man to hesitate to act in his own most grave and important affairs. It is not such a doubt as a juror might conjure up in his own mind, without any substantial basis for it, but it is a doubt founded either on the evidence or want of evidence, and is that state of the case which leaves your minds in such a condition that, after a careful consideration of all the testimony, you cannot say you feel an abiding conviction, to a moral certainty, of the guilt of the defendants. If you do so hesitate, you should give the defendants the benefit of it, and an acquittal. If, on the other hand, however, after an entire comparison and consideration of all the evidence, you feel an abiding conviction, to a moral certainty, of the guilt of the defendants, or any of them, under the law as I have given it to you, you should so declare in your verdict.

“You are the exclusive judges, gentlemen, of the credibility of the witnesses and the weight to be given to their testimony. You are also the exclusive judges

of all questions of fact, and if at any time during the trial the court has intimated its views concerning any disputed question of fact, or the testimony of any witness, you are to disregard it unless it conforms to your own understanding.

“Every witness is presumed to speak the truth. This presumption may be overcome by the manner in which a witness testifies, by his appearance on the witness-stand, or by contradictory testimony.

“The defendant Menefee has availed himself of the right given him, and testified in his own behalf. His testimony is before you, and you are to determine how far it is credible, and to apply to it the same rule and test that you apply to the testimony of any other witness who has been called in this case, keeping in mind, however, the deep interest which he has in the result of the trial.

“The other defendants have not testified, and no inference or presumption is to be drawn against them on that account.

“Now, there has been considerable said during this trial about the sale or transfer of the property, or part of the property, of the United States Cashier Company to an Indiana corporation. The defendants are not on trial for that transaction, and whatever you may think about it, you would not be justified in convicting them in this case on its account. The proof in reference to it was a circumstance in the case, developed during the trial, and it is proper for you to consider for whatever

you may think it is entitled to as explaining or supporting the charges made in the indictment.

“During the trial a witness by the name of Baker was called and testified. During his examination certain letters were produced, written to him by one of the officers of the corporation, not involved in this controversy however, and I desire to caution you again about giving any weight as evidence to any statements contained in those letters. They were used solely and entirely for the purpose of impeaching, or tending to impeach, Mr. Baker by showing that he had made statements out of court inconsistent with his testimony given on the trial. For that purpose they were used, and for no other, and any statements or declarations that Mr. Baker may have made in these letters concerning any of the defendants on trial, or any of the issues involved in this case, or any matters you are to consider, should be entirely disregarded by you, because the guilt or innocence of one individual cannot and ought not to be determined by the declarations of some third party.

“The indictment in this case charges but one conspiracy, although there are numerous overt acts alleged, and therefore the requirements of the law will be satisfied by a general verdict, without passing upon each of the particular overt acts. I think there is no controversy but what they were all proven except two or three; but in any event, proof of one or more of the overt acts, done by a conspirator, would be sufficient to support that averment in the indictment.

“Your verdict, gentlemen, must be unanimous, and after you retire to the jury room you will select one of

your number as foreman, who will sign any verdict that you may return.

“During the progress of this trial the court overruled or denied a motion for a directed verdict as to three of these defendants—Gernert, Bonnewell and Todd. You are not to infer from that, gentlemen, that in the opinion of the court there was evidence sufficient to convict these three gentlemen. It is the duty of the court to determine questions of law and of the jury to pass upon all questions of fact, and therefore, when the court denied the motion for a directed verdict, it simply held that, in its opinion, there was some evidence, sufficient to carry this case to the jury, and to call upon the jury to determine whether it was enough to show that these defendants were guilty of the crime charged against them, and you are to draw no inference against the defendants because of the action of the court in overruling such motion.

“Now, gentlemen, it is needless for me to remind you that this is a case of importance, both to the Government and to the defendants. Take it—consider all the facts and circumstances in evidence before you—consider it carefully and dispassionately, with an eye single to reaching a just conclusion, and return a verdict according to the law and the facts as you understand them.

“There are three forms of verdict that you can return in this case: One is a verdict of not guilty as to all the defendants. Another is a verdict of guilty as to all the defendants except the defendant Bilyeu, and as to him your verdict shall be not guilty. And the third is a ver-

dict of guilty as against two or more of the defendants, and not guilty as to the others. Forms have been prepared which you may adopt, or use these or similar forms, filling in the necessary blanks.

“Mr. Pipes: There are a few verbal matters I would like to call your Honor’s attention to. In the instructions concerning a conspiracy, that it may be a conspiracy to do a criminal act, or an innocent act by unlawful means. I take it that in this case it must be the first.

“Court: Yes, in this case it must be the conspiracy to commit the particular crime charged in this indictment.

“Mr. Pipes: Yes. Now, in one of the definitions of a conspiracy, your Honor, as I remember it and heard it, in naming a number of means or number of acts committed by several persons independently tending to the same end, that it constitutes a conspiracy. I think that would be correct if it were modified to say that it is evidence.

“Court: I didn’t intend to say constituted, if I said it. I intended, of course, to say that it was evidence of the conspiracy.

“Mr. Pipes: That, of course, then will be corrected, as far as that is concerned?

“Court: Yes.

“Mr. Pipes: Now, as to another one: In commenting on the subject of overt acts, your Honor evidently, it is perfectly plain to me, was speaking of the overt acts, but the word ‘overt’ was left out. I think the jury

ought to understand that no act in evidence in this case is an overt act except one of those described and set out in the indictment.

“Court: Yes, I will make that clear to the jury, if I didn’t do that. Gentlemen, the indictment in this case charges that certain letters set out and described in the indictment were sent by the parties named, through the United States mails, in furtherance or in execution of the alleged conspiracy; and these letters constitute the overt acts, and no other act could constitute an overt act except those stated in the indictment.

“Mr. Pipes: Now, I cannot, of course, set out—there was quite a long instruction your Honor gave, but I think I can identify it sufficiently for the purpose of the exception, where the question was asked and answered ‘No.’ I except to that. Does that sufficiently identify it? That whole paragraph.

“Court: Yes.

“Mr. Pipes: And the succeeding paragraph to that, and wherever that same doctrine was put forth, I would like to have an exception.

“Court: Very well.

“Mr. Pipes: Now, then, there is only one other, your Honor, that I want to call your Honor’s attention to: Beginning with the words ‘It would seem,’ followed by Mr. Menefee’s and Mr. LeMonn’s names—I would like an exception to that.

“Court: Very well.

“Mr. Reames: If your Honor please, during the trial and during the argument, both sides used figures given by Mr. House in evidence, and the understanding

was, between Judge Pipes and myself during the argument, that these should go to the jury. They were not introduced in evidence. I believe that they would be of material benefit to the jury in arriving at their verdict. Is there any objection to that?

“Mr. McGuire: There will be no objection on the part of the defendant Gernert, and that will be true as to all the figures of the witness House relating to Mr. Gernert’s case.

“Mr. Reames: Those are not made up in that way. This is showing the receipts and disbursements of the United States Cashier Company; but if you wanted Gernert’s made up, we could make it up and submit it.

“Mr. McGuire: I would be very glad to have that done.

“Mr. Reames: All right, if there would be no objection; and we will let you see it before it goes in.

“Mr. McGuire: That will be very good. If the Court please, I would like to take an exception to those instructions requested by the United States Attorney which were given, modified and not modified, and such instructions as were requested by the defendant Gernert as were not given. I think your Honor gave all of them, but I am not quite sure, and I just want to be sure.

“Mr. Dobson: I except to the instruction in which the Court stated that if there was a conspiracy Mr. LeMonn and Mr. Menefee were parties to this conspiracy, and for this special reason, I want to show in the record, your Honor, that the Court, in mentioning Mr. Bonnewell and other salesmen’s names, referred to the fact that they did not stand in a fiduciary relation to the

company, leaving the inference that Mr. LeMonn did. The record shows that Mr. LeMonn was not a fiduciary in connection with the company, either directly or indirectly.

“Court: Very well. Swear an officer. The jury may now retire.”

These instructions are set out in the Bill of Exceptions for the purpose of determining whether or not the errors hereinbefore recited, if errors, have been cured by the instructions.

To the giving of the following instruction the defendant, (Q) by his counsel, then and there duly excepted, and the Court allowed the exception, to wit:

“It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company a success? Was it their belief that they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises; if they agreed to make false and fraudulent representations and assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they could finally make it a success, would by no means furnish any condonation or legal excuse for

the false and fraudulent representations, which they would under the circumstances agree to make in order to induce the investors and the public to pay over their money.”

To the giving of the following instruction the defendant, (R) by his counsel, then and there duly excepted, and the Court allowed the exception, to wit:

“In considering this question, the question of and concerning the intent to defraud, you must direct your attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business or the corporation a success, or how confident they may have been that they would be able to return that money without loss, or with profit, because the representations which they would have agreed to make would be made for the purpose of getting the money in a wrongful manner, and they could not, under such circumstances, make them rightful by pointing to some ultimate good intent.”

To the giving of the following instruction the defendant, (S) by his counsel, then and there duly excepted, and the Court allowed the exception, to wit:

“The parallel between such a case as I have presented and the crime of embezzlement is very close. It is a well-known fact that nearly every man who embezzles money expects that he will be able to pay it back

without loss; but his taking is wrongful, and his intent to pay it back without loss cannot conceal the wrong. And so in this case, if the defendants, by means of the false and fraudulent representations set out in the indictment, agreed to mislead investors and the public generally into paying over to them or to the Cashier Company their money and their property, then their belief that they could ultimately return that money without loss and with profit would not condone the wrong in getting the money by deception.”

At the beginning of the trial it was agreed and understood between the Court and counsel that objections made and exceptions reserved by Martin L. Pipes, attorney for Mr. Menefee, should be deemed and taken to be objections and exceptions on behalf of all of these defendants.

It is Ordered that all of the exhibits mentioned in the attached stipulation be by the Clerk of this Court transmitted and forwarded in the original to the Clerk of the Circuit Court of Appeals at San Francisco, to have the same force and effect as though certified copies thereof had been printed and attached hereto and said exhibits, and each, every and all thereof are hereby made a part of this Bill of Exceptions.

*In the District Court of the United States for the
District of Oregon.*

UNITED STATES OF AMERICA,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.

Gernert, B. F. Bonnewell, H. M. Todd, Joseph Hunter, O. L. Hopson, P. E. Muraine, and Oscar A. Campbell,

Defendants.

STIPULATION.

IT IS HEREBY STIPULATED by and between the defendants Frank Menefee, Oscar A. Campbell, H. M. Todd, B. F. Bonnewell, and the United States Attorney for the District of Oregon, that the Judge of the above entitled court may settle and sign as allowed the attached and foregoing bill of exceptions; that the clerk of this court shall at the time the transcript is prepared for filing with the Circuit Court of Appeals, transmit to the said clerk, in the original:

Government's Exhibits 1 to 16, inclusive;
Government's Exhibit 22;
Government's Exhibits 28 to 30, inclusive;
Government's Exhibits 34 and 35;
Government's Exhibits 45 and 46;
Government's Exhibit 53;
Government's Exhibits 55 to 57, inclusive;
Government's Exhibits 59 to 70, inclusive;
Government's Exhibits 74 to 85, inclusive;
Government's Exhibits 92 to 108, inclusive;
Government's Exhibits 110 to 220, inclusive;
Government's Exhibits 222 to 442, inclusive.

That these original exhibits, and each, every and all thereof shall be deemed and taken as a part of this bill of exceptions to have the same effect as if they, each,

every and all thereof were copies in full in this bill of exceptions. Exhibit 306 need not be printed.

This stipulation is entered into for the purpose of saving the expense of copying all of said exhibits, and the court may make an order in accordance herewith.

Dated at Portland, Oregon, this 31st day of January, 1916.

CLARENCE L. REAMES,

United States Attorney.

MARTIN L. PIPES,

Attorney for the Defendant Frank Menefee.

JOHN F. LOGAN,

J. J. FITZGERALD,

MARTIN L. PIPES,

Attorneys for the Defendant Oscar A. Campbell,

H. M. Todd and B. F. Bonnewell.

The foregoing bill of exceptions contains all the evidence offered and admitted, relevant to or necessary to an understanding of the above recited objections and exceptions, and all the instructions given to the jury by the Court.

The foregoing bill of exceptions was duly presented and filed within the time fixed by the order of the Court, on behalf of the defendants Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, and is by me duly allowed, this 4th day of February, 1916.

R. S. BEAN,

Judge.

Filed February 11, 1916.

G. H. MARSH,

Clerk.

And afterwards, to wit, on the 11th day of February, 1916, there was duly filed in said Court and cause a Petition for Writ of Error, in words and figures as follows, to wit:

PETITION FOR WRIT OF ERROR.

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, B. F. Bonnewell, H. M. Todd
and Oscar A. Campbell,

Defendants.

PETITION FOR WRIT OF ERROR.

Your petitioners, Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, four of the defendants in the above entitled cause, bring this their petition for a writ of error to the District Court of the United States for the District of Oregon, and thereupon your petitioners show:

That on the 25th day of October, 1915, there was rendered and entered a judgment wherein and whereby your petitioner Frank Menefee was sentenced to imprisonment at McNeil's Island for a period of one year and ten days; and your petitioner B. F. Bonnewell was sentenced to imprisonment in the County Jail of Multnomah County for a period of four months; and your petitioner H. M. Todd was sentenced to imprisonment

in the County Jail of Multnomah County for a period of four months, and your petitioner Oscar A. Campbell was sentenced to imprisonment in the County Jail of Multnomah County for a period of four months.

And your petitioners show that they are advised by counsel that there were manifest errors in the records and proceedings had in said cause in the rendition of said judgments and sentences, to the great damage of your petitioners, the defendants, all of which errors will be made to appear by an examination of the said record, and more particularly by an examination of the Bill of Exceptions by your petitioners tendered and filed herein, and in the assignment of errors thereon hereinafter set out.

And to the end, therefore, that the said judgments, sentences and proceedings may be reversed by the United States Circuit Court of Appeals for the Ninth Circuit, your petitioners pray that a writ of error may issue, directed therefrom to the said District Court of the United States for the District of Oregon, returnable according to law and the practice of this Court, and that there may be directed to be returned, pursuant thereto, a true copy of the record, bill of exceptions, assignment of errors, and all proceedings had in said case, that the same may be removed into the United States Circuit Court of Appeals for the Ninth Circuit, to the end that the error, if any has happened, may be fully corrected, and full and speedy justice done your petitioners.

And your petitioners now make the assignments of error attached hereto, upon which they will rely, and

which will be made to appear by the return of the said record in obedience to said writ.

WHEREFORE, your petitioners pray the issuance of a writ as hereinbefore prayed for, and pray that their assignments of error annexed hereto may be considered as their assignments of error upon the writ, and that the judgments rendered in this case may be reversed and held for naught, and said case remanded for further proceedings.

MARTIN L. PIPES,
J. J. FITZGERALD,
JOHN F. LOGAN,
Attorneys for said Defendants.

Filed, February 11, 1916, G. H. Marsh, Clerk.

And afterwards, to wit, on the 11th day of February, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, it wit:

In the District Court of the United States for the District of Oregon.

United States of America,

vs.

Frank Menefee, B. F. Bonnewell, H. M. Todd
and Oscar A. Campbell,

Defendants.

ASSIGNMENTS OF ERROR.

ASSIGNMENTS OF ERROR OF DEFENDANTS FRANK MENEFEЕ, B. F. BONNE-

WELL, H. M. TODD, AND OSCAR A. CAMPBELL.

The defendants Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, in this motion, in connection with their petition for a writ of error, make the following assignments of error, which they aver occurred upon the trial of the cause, to wit:

I.

The Court erred in admitting testimony, over the objection of the defendants, contained in objection and exception "A," in the bill of exceptions, which is the testimony of N. C. Oviatt, who testified that his name was Nelson C. Oviatt; that he lived at Detroit, Michigan, and was engaged in the manufacture of coin-paying machines, called the Payograph, was president of the Payograph Company, which was a corporation organized under the laws of Michigan, incorporated for \$300,000, with a principal office in Detroit, and having machines manufactured for it in New Haven, Connecticut; that he was acquainted with the defendant Thomas Bilyeu, and met him first in the summer of 1909 in the Ainsworth Block, Portland, Oregon; that the witness had been in Portland since 1892, first in the manufacture of silver spoons, later as an employee of the County of Multnomah, in the tax collection department, and later as coast agent for the Comptograph Company of Chicago, in the sale of adding machines, and also represented the Brandt Cashier Company in the sale of Brandt Automatic Cashiers; that he devised the principle of a coin-paying machine and had gone to Mr. Glover, a pub-

lic engineer, with a view of having him develop it for the witness, but he was unable to do so, and that he presented it to Mr. Bilyeu; that Mr. Bilyeu took it under consideration, and after two days of deliberation said he would take it on, with the understanding that he would have forty per cent. of the results and that the witness was to have the other sixty per cent of the results; that the agreement was not in writing; that the witness was to turn over to Bilyeu his ideas and Bilyeu was to proceed with the development and put it into working shape and build a model.

Which evidence was stated at the time by the District Attorney, in response to an objection made by the defendant's counsel, to be for the purpose of showing that back in 1909 the witness, Mr. Oviatt, was working on a coin-paying machine, and that he had made a full and complete disclosure to the defendant, Bilyeu, and that the Government was going then to proceed to follow the making of the machine known as the Payograph, and the knowledge of the Payograph as it was brought home to the defendants, the attempted sale of a similar machine by the defendants in England, and their knowledge of the Payograph applications pending there, and conversations had between defendants Bilyeu and Menefee and LeMonn with this witness; bring these transactions down to the date where LeMonn made an investigation of the Payograph machines personally and sent the telegram that had been introduced in evidence. And, in response to an inquiry by defendant's counsel, the District Attorney said that the evidence would go to the

extent of showing the knowledge of the defendants of the work that Mr. Oviatt was doing.

This evidence was admitted over the said objection upon the question of the good faith of the defendants.

II.

The Court erred in admitting the following testimony:

The witness continued, under the said ruling of the Court, for the purpose as aforesaid, and testified that he disclosed to Mr. Bilyeu the basic principle, which was the connection of each individual key with a selector bar or rod so that by a depression of that key the proper ejector or ejectors would be turned from a non-paying to a paying position; that Mr. Bilyeu said he would undertake the work, with the understanding that the results would be divided, sixty per cent. to the witness and forty per cent. to Bilyeu, and that was agreeable to witness, and that they shook hands on it. That Mr. Bilyeu said to him, "I will take you out to my model maker," which he did, in South Portland, to Mr. Overlin; that he had not seen Mr. Overlin before, and that Mr. Bilyeu introduced him to Mr. Overlin, and said that the witness had been associated with Mr. Potter in the development of the machine and had not been treated fairly by Mr. Potter, that witness had devised a machine of his own and arranged with Bilyeu to develop it and wanted Overlin to undertake the manufacture of the model; that Mr. Overlin accepted, and they returned to town; that Mr. Bilyeu advertised for a draftsman and put him

to work in the Ainsworth Block; that a model was constructed; that a month or six weeks after that time Mr. Bilyeu said to the witness one day that he had been thinking the matter over for a week past, and had decided that the witness did not own anything in the device, and went on to say that he had applied for a patent in his own name, and the witness said there was nothing further to do except for witness to make a better machine, and that Mr. Bilyeu said he could not do it. That he went East the 2nd day of May, 1910, and went first to the Comptograph Company with sketches, and then to the Wales people, and finally arranged for the building of the machine, and completed it in August, 1910, and that was the Payograph machine; that he applied for a patent on the machine in August, 1911; that the first model was made in August, 1910, and that the second model was completed in 1912.

The witness was then shown three photographs, which were identified as photographs taken in August, 1910, of a machine he had just completed and demonstrated to the executive board of the Wales Adding Machine Company, and the Government then offered the said three photographs in evidence, which were admitted over the defendants' objection and exception, which is exception "B" of the bill of exceptions.

III.

The Court erred in admitting the following testimony:

The witness then continued, subject to the same ruling of the Court, to testify that he returned to Portland the latter part of August, 1910; that he knew of a certain machine of the United States Cashier Company, known as the Bank Cashier, had heard of it and seen it, but never examined it closely; that he thought the machine was one that was covered by the application over the names of Bullington, White and Overlin; that in the year 1910 he met Mr. Bullington, and that he exhibited the three photographs in evidence to Mr. Bullington in August, 1910; that he met the defendant F. M. LeMonn in the office of the Payograph Company in Detroit in January, 1912, and that LeMonn told him that he had been at the office of the National Cash Register Company and had there been told of the Payograph; that LeMonn had a little booklet descriptive of the Payograph, which he said had been given to him by the paymaster. Witness identified a book which he said was exactly like the one LeMonn showed him; that it was issued by the Payograph Company, and that it was the one LeMonn brought to him at the time, one exactly like it and of the same issue, and that LeMonn said he had received it from the National Cash Register Company. The said booklet, over defendants' objection, was admitted in evidence, which is exception "C," and which book is as follows:

The witness continued and testified that the defendant LeMonn said that he had been told of the Payograph by the paymaster, Mr. Myer, and wished to see it, and after questioning by the witness said that he had been with the United States Cashier Company but was not

with them at the time, had got through selling stock and was East looking for other things to finance, and asked the witness if he did not want to take hold of the Payograph and finance it, which the witness said he did not. The witness said he demonstrated the Payograph to LeMonn; that Mr. LeMonn expressed himself as pleased with it, went on East and left his address, with the request that the witness think over the matter of financing the proposition and communicate with him if they decided to take him on to do the work; that the machine he demonstrated to LeMonn was the one described in the little booklet; that there was no model of it. The witness further said he took half an hour to demonstrate the machine; that the machine would pay money, list it and add it; that he did not take the case off the machine, the mechanical part of it.

The witness, further testifying, said that he met Mr. Menefee in October, 1913; that Mr. Menefee came to his office in October, 1913, and told him that he was the president of the United States Cashier Company, and asked what they were going to do with the British patents, or if the witness had sold them, and he said he had not; that Menefee asked what they were going to do with them, and he said he had no other plans than to retain them; that Mr. Menefee then told him they were arranging for a syndicate in Britain to take over their British rights, and that he felt upon investigation by the people there they might run upon the application and it might possibly interfere with the deal, and that he thought for the good of both it might be well to make some arrangement whereby the patent of the Cashier

Company in Great Britain would be included with the patent of the Oviatt machine; that Menefee described to him the deal, that it was to be a million dollar corporation, of which \$200,000 stock was to be paid to the United States Cashier Company, and \$50,000 in cash, which was to be divided between Mr. Bilyeu and the United States Cashier Company, and that if the witness would come into the deal it would be split in thirds. That Menefee wanted him to combine their entire interests in one large corporation. The witness said he took the matter under consideration, and afterwards, in about two weeks, told Menefee he would not entertain the deal.

The witness further testified that subsequent to this conversation, and at the request of defendants Bilyeu and Menefee, he had met said defendants in Chicago, and that they had attempted to get the witness to go in with them upon a proposition by the terms of which the Payograph was to be included in the deal that the defendants had pending in England, and the two said defendants represented to witness that on account of the conflict in Great Britain between the machine of the United States Cashier Company the deal could not be closed without the co-operation of the witness. The witness further testified that he refused to consider said proposition. The witness further testified that the Payograph machine had been patented in the London patent office, and that the Payograph Company owned it.

Witness was asked to demonstrate the Payograph machine, a model of which was in the court room, which he did, and said that the adding machine was not his invention, but that the coin-paying device was his inven-

tion, and was connected with the adding machine so that when the key was depressed and the handle of the adding machine operated, the money is ejected into the hand or an envelope, and fully explained the working of his machine. He testified that his machine was so constructed that the adding machine could be used with or without the coin-paying mechanism, that they were detachable.

And thereafter, and in the course of the trial, Mr. Dobson, of counsel for Mr. LeMonn, asked the District Attorney to have the Oviatt machine brought back into court, after Mr. Oviatt had been excused, and the next morning, at the opening of the court, Mr. Reames offered the said machine, stating that he did not claim the right to have it demonstrated, that the machine was to be shipped East, but that it was at the disposal of the defendants. Whereupon the counsel for these defendants stated to the Court that they did not desire to have the machines demonstrated and that the machine could be sent East as far as they were concerned, but one of the jurors requested that the machine be demonstrated, and thereupon the witness proceeded to demonstrate the machine by actually operating it by putting money into it and by manipulating it, having the money paid out in envelopes according to the design and purpose, the said demonstration being made in the presence of the jury.

IV.

The court erred in admitting the testimony of E. D. Sewell, over the objection of the defendants, which is Exception "D."

Mr. Sewell had testified that he lived in Washington, D. C., and had been employed in the United States Patent Office, for nine years in the Examining Corps, nine years and a half as Assistant Examiner, and about the same period as Principal Examiner, and for the remainder as an Examiner of Classification, and had detailed at length his duties, tending to show his qualifications as an expert in relation to patents, and the procedure in the Patent Office. He further testified that he had made an examination of the records of the Patent Office to ascertain the patents and applications owned and standing in the name of, upon the records of the United States Patent Office, the United States Cashier Company; that his examination extended from January 1, 1909, to December 31, 1914, and he testified that the United States Cashier Company did not own a patent to an adding machine, nor did it, at the time of the examination of the witness, and did not have an application on file for an adding machine on October 29, 1911; nor did it have an application on file at that date for the Lightning Change Maker described; that a patent for the Lightning Change Maker was issued July 6, 1915, and the number of the patent was 1,145,700. That there was no application for the Change Computing Machine by the United States Cashier Company on October 29, 1911, and that the United States Cashier Company did not own any patent for any machine designed to do that work; that the United States Cashier Company did not own any patents to any machine which was designed to compute change for department stores and all classes of retail business, as described in the advertisement; that on the 29th day of October, 1911, the United States

Cashier Company had no application on file for any machine that would do that work, and that from the 1st day of January, 1909, until the 31st day of December, 1914, the United States Cashier Company never did own patents to any of the machines described in the advertisement about which he had been asked.

And the witness testified that the patent which was issued on the 6th day of July, 1915, about which he had testified, was assigned to the International Money Machine Company, and witness presumed it was issued to them; that it had been assigned by the United States Cashier Company; that the patent was based on application made by W. S. Overlin; that except for the assignment it would have been issued to the Cashier Company, and the District Attorney admitted that it was by virtue of the assignment of the United States Cashier Company that the International Company got the patent.

The witness had stated a list of all the applications that had been filed, either on behalf of the United States Cashier Company, or assigned to the United States Cashier Company, and all patents that had been either issued to the United States Cashier Company, or issued to anyone else and assigned to the United States Cashier Company, from the year 1908 to December 31, 1914. These patents were as follows: The first patent was the Potter patent, issued April 28, 1908, and assigned by mesne assignments to the United States Cashier Company, recorded April 12, 1912. A certified copy of the letters patent was received in evidence, Exhibit 343. The witness then described the objects of the invention.

The next patent was issued to Thomas Bilyeu, December 31, 1912, and was a design for the casing for coin-handling machines. And witness testified that there were other applications and other patents that were issued to others, like Thomas Bilyeu, and assigned direct to the International Money Machine Company; that there were eighteen applications and patents together that were either issued to Mr. Bilyeu or to Mr. Overlin and assigned, or other persons in the United States Cashier Company, and assigned to the International Company; that of these eighteen applications there had been six patents issued and the other twelve applications were pending; that there were four where title never went through the United States Cashier Company, but assignment was made to the International Money Machine Company. One of these patents was dated October 20, 1914; another was issued February 28, 1911, assigned by Overlin to Bilyeu, and by Bilyeu to the International Company; another was application by Thomas Bilyeu, filed April 14, 1910, assigned to the International Money Machine Company; another was application filed March 27, 1911, by Bilyeu and Overlin, assigned by Overlin to Bilyeu, and by Bilyeu to the International Company, and the latter had been allowed by the Examiner but not yet patented. Another was application filed September 24, 1909, which was forfeited, and was afterwards passed to issue and patented September 14, 1914, to Thomas Bilyeu.

The witness was then asked the following question: "Now, you have said in your examination yesterday that when an application is filed in the Patent Office, and the

Examiner has made his search and finds something in conflict, or apparently in conflict, that those claims are cited and notice given to the applicant that certain claims are cited against him. Now, can you give to the jury the number of the prior patents that were cited against this Bilyeu Cashier?

The witness answered: "Yes, I have a note of that. Fifteen patents cited during the prosecution of this application."

And the witness testified that one of the citation was a patent issued to a man by the name of Lindeloff, Patent No. 619,321, dated February 14, 1899.

Whereupon the District Attorney asked the witness the following question: "Are you able to say from that examination, as an expert in the science of patent law, whether or not the Lindeloff patent dominates the Bilyeu Cashier?"

To which question the defendants' counsel objected, on the following grounds: "We object to going into it to show whether or not some prior patent they did cite, upon which the Department has issued a patent, if anything conflicts with that. If it were so, it wouldn't have anything to do with this case, and then the court and this jury can't try that out here, it seems to me. This is something that took place in the Patent Office. These defendants made their application."

The counsel for the defendants asked the witness this question: "The Department cites this previous machine, doesn't it?" And the witness answered: "Yes."

After argument of counsel, the Court ruled upon the objection as follows: "The controlling question in this case is one of good faith, and the Government charges that these people were not engaged in a legitimate enterprise, but were using it for the purpose of defrauding the public. Now then, if they had these patents, or pretended to have them, knowing at the time that they were not what they were representing them to be, and based upon that, insisted and represented that their stock was of a certain value, and was increasing in value all the time, and that they proposed to go ahead and manufacture these machines, it would come within the terms of this indictment, and would be a question that I think the jury have a right to consider, in determining whether they were acting in good faith in this transaction. If they were, then of course that is the end of the case. If not, and they come within the provisions of the indictment, and sustained by the testimony, they would be guilty of the charge against them. Therefore, I think the Government has the right to show that, notwithstanding these people had patents, if they knew at the time that their patents were invalid, and would not permit them to manufacture these machines, it is a circumstance going to determine whether they were acting in good faith, or not. It does not go to the validity of the patents. We are not trying that question. It goes to the good faith of the defendants, and for that reason I think the testimony is competent."

And so the Court overruled the objection and permitted the witness to answer, in which ruling the Court erred.

V.

The Court erred in admitting the following testimony:

Under the said ruling of the Court the witness testified that the Lindeloff patent was issued February 14, 1899, which was cited against the Bilyeu patent, and the witness said he had read the claim of the Lindeloff patent in connection with the machine shown and described in the Bilyeu patent, No. 1,114,574, and in his judgment the construction shown and described was within Claims 1 and 2 of the Lindeloff patent.

And the District Attorney asked the following question: "What would you say as a patent expert as to whether or not the claims numbered 1 and 2 of the Lindeloff as allowed, dominate and control these claims in the Bilyeu Cashier?"

And the witness answered: "These claims as allowed dominate the construction shown in the Bilyeu Cashier."

And in like manner the witness testified about Patent No. 885,136, patented February 28, 1911, to Thomas Bilyeu and W. S. Overlin, and assigned direct to the International Money Machine Company. That the purpose of this machine was the same as that of the patent to Bilyeu hereinbefore last recited, No. 1,114,574, and the witness testified that the Lindeloff patent was cited against that application, and that as an expert in his judgment the claims of the Lindeloff patent dominated this patent in the same way that they did the patent previously spoken of, the original patent.

And the witness was permitted further to testify, in substance, in response to questions by counsel for defendants, that the witness referred to the patent in speaking about citing; that they generally made a positive rejection in view of that as meeting it, as anticipating the claims; they reject the claim to which that patent applies; that in the prosecution of an application through the Patent Office the Solicitor and Examiner give information back and forth until they finally get exactly what is thought to be patentable by the Patent Office; that the Patent Office delivers a written opinion to the applicant, that he is not entitled to a patent because there has been another patent prior to that already issued, but that when they do not reject it, but issue a patent, they do not tell him that, they simply cite the art, cite the patent; that the Department did not express any opinion regarding the infringement, and that the witness did not express any opinion when that particular patent was issued, not as dominating, simply anticipating.

And thereupon, in view of the evidence, counsel for defendants moved to have the evidence stricken out.

And being further examined by the District Attorney, the witness testified that a letter of rejection is written in which the patent is identified and the applicant is told that his claim is rejected in view of that patent, in anticipation, but that when it was not rejected, if it was not to be rejected on that patent, that patent would not be cited except in a friendly way perhaps, to show what the prior art was.

And in response to questions by the defendants' counsel, the witness stated that he believed in his judg-

ment claims 1 and 2 of the Lindeloff cover the construction disclosed by the Bilyeu machine; that that was witness' opinion after examination; that nobody in the Patent Office gave an opinion to Mr. Bilyeu about the dominating control referred to.

Whereupon counsel for the defendants said: "I think I am entitled to have that out, for it didn't go to Mr. Bilyeu."

The Court then said: "I understand they notified him of this prior patent."

Counsel for Defendants: "They didn't notify him of the witness' opinion as an expert, because it was not their duty to give him that information."

The Court: "That is clear, but they did notify him of the patent, of the prior patent."

Counsel for Defendants: "Yes, they cited the patent."

The Court: "And advised him of that, so he knew there was such a patent, and he took his own chances with references to disposition."

Counsel for Defendants: "I suppose, for his information about that, but he didn't have the benefit of this witness' opinion that the jury has."

The Court: "No, goes to the question of his good faith."

And the Court overruled the motion to strike out the testimony, and in so ruling committed error, which is Exception "E," and the witness testified that there were thirteen patents cited in the Bilyeu patent, issued prior to that time, including the Lindeloff.

VI

The Court erred in admitting the following testimony:

The witness testified further about Application 555,552, filed April 14, 1910, by Bilyeu, Overlin and Gridley, and still pending; that the assignment was made to the International Money Machine Company; that it was an invention to cover another machine of the Bilyeu Cashier type. After describing the invention, witness testified that there were ten patents cited against that.

Witness further, under the ruling of the Court, testified about Patent No. 617,201, which was forfeited and renewed under Serial No. 30,673, and was allowed on June 1, 1915, but had not yet been patented. An assignment of this case was made to the International Money Machine Company by the applicants, none to the United States Cashier Company. The purpose of this invention was to print a record of the amount of money delivered by the machine, and, after describing the machine, the witness testified that there were eleven patents cited against this patent.

The witness then testified about Application No. 638,434, filed by W. S. Overlin, assigned to the United States Cashier Company, and by mesne assignments to the International Money Machine Company. The filing was November 3, 1911. This was a machine for delivering paper currency. After describing the machine, the witness testified that there were nine patents cited

against this patent. One was a patent that had been issued to a man by the name of Cook. The Cook patent was No. 807,724, dated December 19, 1905, and in the witness' judgment Claim 63 of the Cook patent includes the drum structure disclosed in this application, and dominates it.

The witness then testified about Application No. 702,164, filed June 7, 1912, the Bank Cashier.

At this point it was admitted that negative in the indictment as to the ownership of the patents by the Company did not include the Bank Cashier, that it had been left out of the indictment inadvertently.

Thereupon the counsel for the defendants objected to evidence concerning the Bank Cashier, on the grounds stated in the following statement to the Court: "Now, that brings up a question, a good clean-cut question for your Honor to decide, whether or not it is sufficient in an indictment, any more than it is in a suit in equity, to charge a representation as being false. If I understand the rule of pleadings applicable to civil as well as criminal cases, when you allege a false and fraudulent representation, you haven't gone far enough by applying to it that epithet of fraud vituperative. What you have to do, as I understand, in a civil or criminal case, when you are depending upon false representations, is to state in what particular it is false; a false representation may not be fraudulent, and the mere designation of it by that adjective is not sufficient."

Whereupon, after argument of the District Attorney, the Court ruled as follows: "I think there is a

reason why this testimony is competent, and that is, it has been shown in evidence that this company advertised at a certain time that they had patents to these certain named machines, they owned the patents to certain named machines. The evidence up to this time shows that they didn't have patents to some of these machines they were then advertising. Now, that was either an intentional mis-statement, or it was an error of judgment and misinformation, and that becomes an important question, I suppose; it will be before this trial is through, for some triers of fact to determine in arriving at that question. I think the Government is entitled, in a case of this kind, where it depends on circumstances, to put in evidence other acts of a similar kind, transactions of a similar kind that happened at the same time. And when they advertised these machines the Government alleges they didn't have, they advertised another machine they didn't have at the same time, and it is for the Government to show the purpose and intent for which they advertised the machine, and for that reason I think it is competent. But I don't think for the purpose of showing that was one of the means by which the defendants intended to carry out that conspiracy. I think the Government is required in an indictment of this kind to negative those allegations, but it simply goes to the intent or purpose of the defendants."

And counsel for the defendants, further stating his objection, said: "I will have the record show that, the part of it I am sure about is that the indictment, in effect and legal substance, alleges by admitting that that

machine was patented, and that no issue is raised between the indictment and the plea of not guilty on that question."

And the Court overruled the defendants' objection, to which an exception was taken, which is Exception "F."

VII.

The Court erred in admitting the following testimony:

The witness, under said ruling, further testified about Application No. 702,164, filed by Nelson White, W. S. Overlin and F. A. Bullington, filed June 7, 1912. The title of the invention was a Mechanical Cashier, Adding and Listing Machine. The patent had not yet been granted. This was assigned to the United States Cashier Company, and afterwards to the International Money Machine Company by the Cashier Company. The machine comprised an adding machine with printing attachment to print the amount separately and to take totals. After describing the machine, the witness testified that there were twenty-four American patents, and two German and two English patents cited by the Examiner against that machine, and that that patent had been placed in interference by Nelson C. Oviatt, on September 29, 1914. There had been one hundred and forty-seven claims made in the application, and of these claims three were made counts in the issue of interference, and disregarding these leaves one hundred and forty-four, of which twenty have been allowed and one hundred and twenty-four rejected.

The witness then testified about Application 710,512 filed by W. S. Overlin, for Money Paying, Changing and Listing Machine, filed July 19, 1912. This was the machine called the Computing Machine, and the same machine that had been identified by the witness Overlin upon the stand as the Computing Machine which he had built. No patent had been granted. This had been assigned by Overlin to the United States Cashier Company, and by the Cashier Company to the International Money Machine Company. The purpose of the invention was to deliver coins of a value equal to the difference between an amount tendered and an amount to be deducted from it. After describing the machine, the witness testified that there were twenty-one United States patents cited against that machine, and three English patents and two German patents. That there were two patents to a man named Osborne cited against that patent, Osborne patent No. 864,185, dated August 27, 1907, and Osborne patent No. 982,853, dated January 31, 1911. The witness said he had examined the Osborne patent carefully; that it had been issued to the National Cash Register Company, Dayton, Ohio, as the assignee from Osborne, the inventor. There were one hundred and fifteen claims in the Osborne patent.

Whereupon the District Attorney asked the witness the following question: "Now, I wish you would make a comparison and show to the jury, I would like to have you do it carefully and in detail, whether or not this Osborne patent dominates and controls this change computing machine, and if it does so, in what manner it

does it, and what claims there are in the Osborne patent that do it.”

And the witness then testified, in answer to said question, that he found several which, in his judgment, included the construction of the machine shown here as the computing machine. The witness noted Claim 18 of the Osborne patent and read it: “Claim 18. In a change maker, the combination with a movable element, of means for actuating the same, according to the amount of the purchase, means for further actuating the same according to the amount received to bring it to a position representing the difference between the two amounts, and a money changer controlled by said movable element.” The witness then read Claim 47 of the Osborne patent, and Claim 100 and Claim 101, and then testified that the claims in the Osborne patent were fundamental and basic, and that in the judgment of the witness it would be extremely difficult for anyone to evade that patent, that the only way he could escape it would be to invalidate it. The witness testified that the Osborne patent was pending for sixteen years, and was finally passed upon and patent issued on August 27, 1907, and the life of the patent would be seventeen years from the date of that issue.

All of the foregoing testimony was taken and received over the objection of the defendants that it was not competent on the question of good faith, or for any other purpose, to prove that the patents or applications involved could be affected by citations of a prior patent, and an exception was allowed, which is Exception “G.”

VIII.

The Court erred in admitting the following testimony:

The witness testified about Application No. 728,853, filed by W. S. Overlin, for money deliveries on street cars, filed complete October 13, 1912, patented July 6, 1915, Patent No. 1,145,700. That machine is known as the Lightning Change Maker. This was assigned by Overlin to the United States Cashier Company, and by them to the International Money Machine Company. The machine differs primarily from the Bilyeu Cashier in that there is no handle here for operating and discharging. After describing the machine, the witness testified that through his reading of the Lindeloff patent he was led to believe that the first claim of Lindeloff includes the construction of this machine. That this patent was to issue to the International Money Machine Company, and was issued July 6, 1915, in the natural course.

This testimony was taken subject to the same objection and the same exception, which is Exception "H."

IX.

The Court erred in admitting the following testimony:

The witness testified about Application No. 729,093, filed by Robert L. Bailey, for a Change Making and Computing Machine, filed November 1, 1912. This was assigned by Bailey to the United States Cashier Com-

pany, and by them to the International Money Machine Company. The application was still pending, no patent having been granted. The purpose of the invention was to deliver the difference between an amount tendered and an amount to be deducted therefrom, similar in purpose to that of the Overlin computing machine which had been theretofore referred to.

The witness was asked the following question: "Now, what have you to say as to your opinion in regard to this patent being dominated by the Osborne patent, whether or not this is the same as the other computing machine, and to the same degree?"

The witness answered: "The machine shown in this application is within the claims of the Osborne patent which were formerly referred to, and dominated by it."

This evidence was taken over the objection and exception of the defendants, and is Exception "I."

X.

The Court erred in admitting the following testimony:

The witness testified that there was a patent, No. 737,958, issued September 1, 1903, to one Pfeifer, which was cited against the Bailey patent, and the witness said that he had examined the Pfeifer patent, and, in response to questions, stated that the Pfeifer patent was issued to Mast, Foss & Company of Springfield, Ohio, and that eighteen claims of that patent, in witness' judgment, included the construction of the Bailey machine as already shown.

This evidence was taken over the defendants' objection and exception, which is Exception "J."

XI.

The Court erred in admitting the following testimony:

The witness testified as to Application No. 729,704, for Currency Paying and Computing Machine, filed by W. S. Overlin, November 5, 1912, for a Mechanical Cashier, that being the official title. This was assigned to the United States Cashier Company, and by the Cashier Company to the International Money Machine Company, and no patent had yet been granted. It was an application for a machine designed to deliver either paper currency or coin, at the wish of the operator, one of those, a paper currency delivery machine, having been referred to hitherto. And after describing the machine, he testified that there were twenty-one patents cited against the application, three of which were German.

This evidence was admitted over the objection and exception of the defendants, which is Exception "K."

XII.

The Court erred in admitting the following testimony:

The next application was No. 742,958, which the witness testified was an application by Thomas Bilyeu, filed January 18, 1913, the title being Paper Money Deliveries; that a patent had not yet been granted. This

was assigned to United States Cashier Company, and by the Cashier Company to the International Money Machine Company. The purpose of this was to deliver paper money. The witness described the machine, which is similar to the description of a similar machine before given, and he testified that, in his opinion, the application for a currency payer, filed January 18, 1913, by Mr. Bilyeu, contained rather broad claims that had already been allowed.

This evidence was taken over the objection of the defendants, and the exception, which is Exception "L."

XIII.

The Court erred in admitting the following testimony:

The witness testified about Application No. 755,817, filed by Nelson White, March 20, 1913, for Adding and Listing Machine, no patent yet issued. This was assigned to the United States Cashier Company, and by it to the International Money Machine Company. This was an improvement in adding machine, and did not, of course, claim to be broadly new because the adding machine art is pretty old and the basic patents have expired. There were twelve claims allowed on this application, and fourteen objected to as not being clear enough to be understood so that the Examiner could take definite action upon them, and twenty-two were rejected. There was an amendment filed since that time on the application, but not yet acted on. The amendment was dated May 25, 1915, and its standing

at the time of the trial was that it was awaiting action on the part of the Patent Office. Against this patent the witness testified that there were ten patents cited, one English, one German, and the others United States; that the patents cited were Burroughs and Pike.

This evidence was taken over the objection and exception of the defendants, which is Exception "M."

XIV.

The Court erred in admitting the following testimony:

The witness testified concerning Application No. 767,335, filed by Thomas Bilyeu, May 13, 1913, for Paper Currency Paying Machine; no patent yet allowed. This was assigned to the United States Cashier Company, and by it to the International Money Machine Company. The purpose of this was to deliver paper currency in a flat condition, and was a further advance in that particular art. The witness testified that the claims allowed in that application were, he considered, broad. There were eight prior patents cited against that application during the consideration of that patent.

This evidence was taken over the same objection and exception, and is Exception "N."

XV.

The Court erred in admitting the following testimony:

The witness testified concerning Application No. 836,771, which was an application filed by Nelson White, May 6, 1914, for Ribbon Feeding Machine. This was assigned to the United States Cashier Company, and by the United States Cashier Company to the International Money Machine Company; that no patent has yet been granted on this application, the last action having been a rejection, and no amendment yet entered in the files. This was an improved mechanism for feeding and inking ribbon used in adding machines, typewriters, and other machines. The witness described the invention. There were ten claims in the application, of which three specific ones had been allowed, and the other seven rejected, and the witness testified that there were seven prior patents cited against this application.

This evidence was taken over the same objection and exception, which is Exception "O."

XVI.

The Court erred in admitting the following testimony:

The witness testified concerning Application No. 838,065, filed by Nelson White, May 12, 1914, for a Coin Delivery Machine, no patent yet issued on the application. This was assigned to the United States Cashier Company, and by them to the International Money Machine Company. This was a machine designed for the same purpose as the so-called Lightning Change Maker. It was a complete reorganization, different organization. It was broadly to select and dis-

charge coins by the depression of a key. After describing the invention, the witness testified that there had been eleven prior patents cited by the patent office in relation to this application.

This evidence was taken over the same objection and exception, which is Exception "P."

XVII.

The Court erred in giving the following instruction:

"It has been truly said in argument that one of the cardinal points in this case is the intent of the defendants. But what intent? Was it their intent that they could make the business of the United States Cashier Company a success? Was it their belief that they could make the enterprise of the United States Cashier Company successful? The answer to these questions would necessarily be No. If they agreed to make false and fraudulent pretenses, representations or promises; if they agreed to make false and fraudulent representations and assurances, for the purpose of deceiving the investors and the public in respect to the true condition of affairs of the corporation, or the value of its stock, then the ultimate intent to make the business of the corporation a success, or the ultimate belief of the defendants that they could finally make it a success, would by no means furnish any condonation or legal excuse for the false and fraudulent representations, which they would under the circumstances agree to make in order to induce the investors and the public to pay over their money."

This instruction was given over the objection and exception of defendants, which is Exception "Q."

XVIII.

The Court erred in giving the following instruction:

"In considering this question, the question of and concerning the intent to defraud, you must direct your attention to the intent presented by the particular transaction set out in the indictment. If these defendants agreed that they would put forth the false representations or promises alleged, for the purpose of deceiving and misleading investors and the public into paying over their money, then it matters not how confident they may have been that they would be able to make the business or the corporation a success, or how confident they may have been that they would be able to return that money without loss, or with profit, because the representations which they would have agreed to make would be made for the purpose of getting the money in a wrongful manner, and they could not, under such circumstances, make them rightful by pointing to some ultimate good intent."

This instruction was given over the objection and exception of defendants, which is Exception "R."

XIX.

The Court erred in giving the following instruction:

"The parallel between such a case as I have presented and the crime of embezzlement is very close.

It is a well known fact that nearly every man who embezzles money expects that he will be able to pay it back without loss; but his taking is wrongful, and his intent to pay it back without loss cannot cancel the wrong. And so in this case, if the defendants, by means of the false and fraudulent representations set out in the indictment, agreed to mislead investors and the public generally into paying over to them or to the Cashier Company their money and their property, then their belief that they could ultimately return that money without loss and with profit would not condone the wrong in getting the money by deception."

This instruction was given over the objection and exception of the defendants, which is Exception "S."

Martin L. Pipes,
J. J. Fitzgerald,
John F. Logan,

Attorneys for Defendants Frank Menefee, B. F.
Bonnewell, H. M. Todd, and Oscar A. Campbell.

Filed February 11, 1916. G. H. Marsh, Clerk.

And afterwards, to-wit, on Friday, the 11th day of February, 1916, the same being the 89th judicial day of the regular November, 1915, term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

ORDER ALLOWING WRIT OF ERROR.

Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, the defendants in the above entitled cause, having filed herein and presented to the court their petition praying for the allowance of a Writ of Error from the United States Circuit Court of Appeals for the Ninth Circuit to the above-entitled court, and having submitted therewith the Assignment of Errors intended to be urged by them; praying also that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all further proceedings in the above entitled District Court be suspended, stayed and superseded, and that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals;

NOW, THEREFORE, in consideration of the premises, and the Court being fully advised, and the above named defendant Frank Menefee having heretofore submitted to the above entitled court his bond for appearance in the United States District Court for the District of Oregon, or in the United States Circuit Court of Appeals for the Ninth Circuit, as may hereafter in this cause be ordered, in the sum of five thousand dollars (\$5,000.00), and the defendants B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, having heretofore submitted to the said court bonds for appearance therein each in the sum of twenty-five hun-

dred dollars (\$2,500.00) said sums being the amounts of bail heretofore fixed by this court for the said defendants, and said bond and bonds having been heretofore accepted and approved by this Court:

IT IS HEREBY ORDERED that the aforesaid Writ of Error be, and the same is, hereby allowed; and

IT IS FURTHER ORDERED that a transcript of the record, proceedings, and papers in this cause, duly authenticated, be sent to the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that all further proceedings in this above-entitled District Court be suspended, stayed, and superseded until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that sentence and execution herein be stayed until the final disposition of said Writ of Error in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit; and

IT IS FURTHER ORDERED that the bond for costs upon the Writ of Error herein be, and it is hereby, fixed at the sum of one hundred dollars.

Dated February 11, 1916.

Chas. E. Wolverton,
United States District Judge.

Filed February 11, 1916. G. H. Marsh, Clerk.

And afterwards, to-wit, on the 28th day of February, 1916, there was duly filed in said Court, and cause, a Praecipe for Transcript, in words and figures as follows, to-wit:

PRAECIPE FOR TRANSCRIPT.

*In the District Court of the United States for the
District of Oregon.*

United States of America,

vs.

Frank Menefee, F. M. LeMonn, Thomas Bilyeu, O. E.
Gernert, B. F. Bonnewell, H. M. Todd, Joseph
Hunter, O. L. Hopson, P. E. Muraine and Oscar
A. Campbell, Defendants.

February 26, 1916.

G. H. Marsh,
Clerk of said Court,
City.

Dear Sir:

You will please prepare a transcript on appeal in the above entitled cause for the defendants Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, and make a part of said transcript as follows:

1. Indictment.
2. Bill of Exceptions.
3. Judgment of the Court.

Also the Journal entries as follows:

Book 25:

1. Return of indictment, page 79.
2. Plea of not guilty, page 103.
3. Another plea of not guilty, page 206.
4. The beginning of the trial, bottom page 337 and 338.
5. Drawing of jury, page 340.
6. Appearance of Mr. Atkins, page 370.
7. Motion for directed verdict, page 393.
8. Order on said motions, page 396.
9. Retirement of jury, page 402.
10. Return of verdict, and verdict, page 403.
11. Sentence, page 27 of Book 26.
12. Allowance of writ of error, page 247, page 26.
13. Petition for writ, and assignment of errors, page

It is stipulated in this case, as you will find by the stipulation set out in the Bill of Exceptions, that you shall, at the time the transcript is prepared for filing with the Circuit Court of Appeals, transmit to the clerk of said court, in the original, the following exhibits:

- Government Exhibits 1 to 16, inclusive;
- Government Exhibit 22;
- Government Exhibits 28 to 30, inclusive;
- Government Exhibits 34 and 35;
- Government Exhibits 45 and 46;
- Government Exhibit 53;
- Government Exhibits 55 to 57, inclusive;
- Government Exhibits 59 to 70, inclusive;

Government Exhibits 74 to 85, inclusive;
Government Exhibits 92 to 108, inclusive;
Government Exhibits 110 to 220, inclusive;
Government Exhibits 222 to 442, inclusive.

These are to be transmitted in the original and will not form a part of the transcript proper, nor will they be printed.

Yours very truly,

Martin L. Pipes.

And afterwards, to wit, on the 13th day of March, 1916, there was duly filed in said Court a Bond for Costs on Writ of Error, in words and figures as follows, to wit:

BOND FOR COSTS ON WRIT OF ERROR.

*In the District Court of the United States for the
District of Oregon.*

United States of America

vs.

Frank Menefee, B. F. Bonnewell, H. M.
Todd, and Oscar A. Campbell,
Defendants.

BOND FOR COSTS.

WHEREAS, the above named defendants have taken a writ of error, which has been allowed by the judge of the above entitled court; and

WHEREAS, the said court has fixed the sum of one hundred dollars (\$100) as the amount of the bond to be given by the said defendants for costs on said appeal, in case the same should be affirmed:

NOW THEREFORE, Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell, as principals, and Fred V. Conley, as surety, hereby acknowledge themselves, their heirs, administrators and assigns, firmly bound, jointly and severally, to the United States of America, to pay to the United States of America the sum of one hundred dollars (\$100).

Done under our hands and seals this 11th day of March, 1916.

The condition of the above obligation is such that if the said defendants shall pay the costs that may be adjudged against them in the said United States Circuit Court of Appeals, if the said judgment be affirmed, then in that case the above obligation to be void; otherwise in full force and effect.

Frank Menefee (Seal)

Fred V. Conley (Seal)

B. F. Bonnewell (Seal)

By John F. Logan

H. M. Todd (Seal)

By John F. Logan

Oscar A. Campbell

By John A. Logan (Seal)

State of Oregon,
County of Multnomah,—ss.

I, Fred V. Conley, being first duly sworn, depose and say: That I am the surety in the above entitled bond, and that I am worth the sum of two hundred dollars (\$200) over and above my just debts and liabilities and property exempt from execution.

Fred V. Conley.

Subscribed and sworn to before me this March 11th, 1916.

E. M. Hall,

Notary Public for Oregon.

(Seal) My commission expires Jan. 21, 1917.

Approved, March 13, 1916.

Clarence L. Reames, U. S. Attorney.

R. S. Bean, Judge.

State of Oregon,
County of Multnomah,—ss.

Due service of the within bond is hereby accepted in Multnomah County, Oregon, this 13th day of March, 1916.

Clarence L. Reames,

Attorney for U. S.

Filed March 13, 1916.

G. H. Marsh, Clerk.

UNITED STATES OF AMERICA,)
) ss.
 District of Oregon.)

I, G. H. MARSH, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on writ of error in the case in which the United States of America is plaintiff and defendant in error, and Frank Menefee, B. F. Bonnewell, H. M. Todd and Oscar A. Campbell are defendants and plaintiffs in error, in accordance with the law and the rules of court and in accordance with the praecipe of said plaintiffs in error, and that the said transcript is a full, true, and correct transcript of the record and proceedings had in said court in said cause in accordance with the said praecipe as the same appear of record and on file at my office and in my custody.

And I further certify that the cost of the foregoing transcript of record is \$. for clerk's fees for preparing the said transcript, and \$ for printing said transcript, and that the same has been paid by said plaintiff in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, in said district, this day of March, 1916.

Clerk.